UNITED NATIONS

TD

United Nations Conference on Trade and Development

Distr.
GENERAL

TD/B/RBP/101
29 July 1994

Original: ENGLISH

TRADE AND DEVELOPMENT BOARD
Intergovernmental Group of Experts on
Restrictive Business Practices
Thirteenth session
Geneva, 24 October 1994
Item 4 of the provisional agenda

Handbook on Restrictive Business Practices Legislation

Note by the UNCTAD secretariat

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GE.94-53288 (E)

INTRODUCTION

1. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in section F.6 (c), provides for the compilation of a Handbook on Restrictive Business Practices Legislation.

2. Further, the Intergovernmental Group of Experts on Restrictive Business Practices, at its twelfth session, requested the UNCTAD secretariat to continue the compilation and updating of the Handbook on Restrictive Business Practices Legislation (TD/B/40(2)/2 - TD/B/RBP/98, annex I).

3. Accordingly, the secretariat has prepared this note which contains commentaries on, and texts of, restrictive business practices legislation of Lithuania, Norway and Portugal. It should be noted that Norway and Portugal have passed new laws; the old legislation was already published in the UNCTAD Handbook in TD/B/RBP/49 of 29 June 1988 for Portugal and TD/B/RBP/82 of 14 August 1991 for Norway.

4. To date, the UNCTAD secretariat has issued notes containing commentaries and texts of restrictive business practices legislation of 24 countries: Belgium, Brazil, Canada, Chile, Denmark, Finland, France, Germany, Italy, Jamaica, Kenya, Lithuania, Pakistan, Poland, Portugal, the Republic of Korea, Norway, Spain, Sri Lanka, Sweden, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and Venezuela.

5. The Officer-in-charge of UNCTAD, in his note of 3 May 1994, requested States which so far had not done so, or which had introduced new or amending RBP legislation since their last communication to the UNCTAD secretariat, to provide the UNCTAD secretariat with their relevant legislation, court decisions and comments, on the basis of the format supplied (see below). In order to facilitate the reproduction of texts of legislation in more than one official language of the United Nations, States were invited, as called for by the Intergovernmental Group, to submit, if possible, the text of their legislation in one or more other languages of the United Nations.

6. The UNCTAD secretariat is grateful to States which have contributed the material requested for the compilation of the Handbook, and once again requests States which have not yet done so to respond to the request of the Officer-in-charge of UNCTAD.

Format for contributions to the Handbook

A. Description of the reasons for the introduction of the legislation.

B. Description of the objectives of the legislation and the extent to which they have evolved since the introduction of the original legislation.

C. Description of the practices, acts or behaviour subject to control, indicating for each:

(a) The type of control, for example: outright prohibition, prohibition in principle, or examination on a case-by-case basis;

(b) The extent to which the practices, acts or behaviour in section D, paragraphs 3 and 4, of the Set of Principles and Rules are covered by this control, as well as any additional practices, acts or behaviour that may be covered, including those covered by controls relating specifically to consumer protection, for example, controls concerning misleading advertising.

D. Description of the scope of application of the legislation, indicating:

(a) Whether it is applicable to all transactions in goods and services and, if not, which transactions are excluded;

(b) Whether it applies to all practices, acts or behaviour having effects on that country, irrespective of where they are committed;

(c) Whether it is dependent upon the existence of an agreement, or of that agreement being put into effect.

E. Description of the enforcement machinery (administrative and/or judicial), indicating any notification and registration agreements, and principal powers of body(ies).

F. Description of any parallel or supplementary legislation, including treaties or understandings with other countries, involving cooperation or procedures for resolving disputes in the area of restrictive business practices.

G. Description of the major decisions taken by administrative and/or judicial bodies, and the specific issues covered.

H. Short bibliography citing sources of legislation and principal decisions, as well as explanatory publications by Governments, or legislation, or particular parts thereof.

I. Commentary by the Government of Lithuania on its Law on Competition of 1 November 1992, and Decree No. 785 regulating the Price and Competition Office (PCO)

The Law on Competition of the Republic of Lithuania has entered into force on 1 November 1992. The Price and Competition Office (PCO) under the Ministry of Economics was established, staffed and started its practical activities since 10 February 1993 in order to ensure the oversight of the observance of the Law.

A. Description of the reasons for the necessity of adopting this Law

The complex economic reform is being carried out in the Lithuanian Republic with an objective to reorganize centrally-planned economy to the market economy. In the process of implementation of reforms the wide price liberalization was carried out which enabled to ensure both the freedom of economic entities in their economic decisions and the possibilities of consumers to make their choice. The privatization process of the State economic sector was going on in parallels and it is taking place up to now. The above-mentioned reforms were being implemented under the situation of inherited economic structure highly concentrated and highly monopolistic.

Really problems related to the large market power and abuse of dominant position of large economic entities appeared during the process of price liberalization. One could observe also the agreements of the economic entities and their concerted practices on price fixing and sharing market. Thus, the aim of the further development of reforms and economic progress caused the necessity of both the adoption of the Law on Competition and implementation of oversight of its observance in order to prevent actions that might restrict competition. General experience of industrial countries in development of market economies played a role of great importance in creating the basis of the competition law. No less important were the references of international organizations, such as EFTA and the World Bank and the examples of the countries-members of EEC in particular taking into account the task of integration of Lithuania into the worldwide and regional economic systems.

The harmonious coordination of the Competition Law and practice with the existing worldwide and regional practice is an essential factor in pursuing the integration aims.

B. The description of appropriate objectives and complementary legitimate acts of the Law

The main objective of the Law on Competition is preventing the business restraining practice (anti-competitive behaviour) in order to create conditions for effective competition in commodity markets. Consequently, it creates the basis for economic effectiveness and consumer welfare.

Nothing has been changed in the Law on Competition since the time it had entered into force, since 1 November 1992.

C. The description of appropriate controllable practices

The Law on Competition of the Lithuanian Republic contains a prohibition to economic entities that occupy the dominant position in the market to act in a manner which already restrict, or may restrict competition and thus may violate the economic interests.

Moreover, the Law on Competition of the Lithuanian Republic provides the following prohibitions:

- the agreements (concerted actions) among economic entities that restrict or hinder the competition;
- restriction of the competition by bodies of the State authority and Government (are also prohibited by the Law);
- unfair competition;
- the concentration of market structures is controlled and prohibited if after the concentration the dominant market position may be noticed and competition is restricted or may be restricted in the future.

Prohibition of Abuse of Dominant Market Position

The Law provides, that the economic entity cannot be considered a dominant one, if its market share of certain goods is no more than 40 per cent. A sample list of the prohibited actions of economic entity is described in the Law on Competition. This list contains:

(1) operation related to putting obstacles to competing economic entities in their attempts to enter the market;

(2) pushing competitors out to competing economic entities of the market;

(3) discrimination of the partners and price fixing for the third persons.

To summarize: these are both vertical and horizontal actions that restrict competition and are prohibited by the Law.

The article 5 of the Law on Competition "Exceptions to prohibited activities" provides at the same time, that the activities of dominant economic entities that are prohibited by the Law on Competition by the formal characteristics may be considered to be in agreement with the Law if it is proved that they resulted in:

- constant reduction of prices for consumers;
- improvement in the quality of goods.

It means, as a matter of fact, that each concrete case of abuse of dominant position is to be investigated and evaluated separately.

In 1993 the resolution was carried by the Competition Council which provided in addition the criterion of dominant market position.

Moreover, we have a provision to pass the legitimate act which would regulate the cases of abuse of market dominance.

Prohibition of agreements (concerted actions) between economic entities which restrict or hinder competition

A sample list of prohibited agreements and concerted actions is presented in the Law on Competition if they restrict or hinder competition. These are agreements on fixed prices, volume of production, sharing market according to territorial principle as well as principles of volume of sales and purchases of goods, types of goods, groups of purchasers or sellers. Moreover, both ousting competitors from the markets and making obstacles in their way of entering into the market (and doing this through the agreement) as well as refusal of concluding contracts with certain sellers or purchasers are also considered as violation of the Law and are prohibited by the latter.

An exception rule is also provided by article 5 of the Law on Competition to prohibited agreements (coordinated actions) that restrict or hinder competition. It means, that every concrete case of agreement (concerted actions) should be considered (investigated) and legally evaluated separately.

Prohibition of bodies of State authority and Government from restricting competition

Authorities are prohibited from making decisions which:

(1) restrict the independence of economic entities or the conclusion of economic contracts;

(2) hinder setting and reorganization or restructuring of existing economic entities;

(3) put in advantage or disadvantage individual economic entities or otherwise restrict competition.

This prohibition reflects the specific situation in the transition to market economy and is valid as much as it is in agreement with authority of State bodies provided by the other laws.

Prohibition of activities of unfair competition

There is a prohibition to economic entities from dissemination of misleading, improper and distorted data (including advertising too) that may cause losses of another economic entity or may harm its reputation.

It is also prohibited to mislead customers through false information regarding the quality of goods, characteristics of utilization, location and way of manufacture, amount and price of sale. The wilful use of the name, trade name or marking, form of product packaging or exterior of other economic

entities is also attributable to the practices of prohibited unfair competition. Moreover, economic entities are prohibited from the actions, related to industrial espionage.

No exceptions apply to the prohibited unfair competition. In 1993 the Competition Council has ratified "Executing Order of the Supervision of Unfair Competition Actions", which regulates in detail actions of unfair competition, makes their legal evaluation and provides economic sanctions.

Control of the concentration of market structures

The Law contains the provision that economic entities must inform the PCO about the expected concentration of structures before undertaking any steps of market concentration if total sum parameters which reflect economic actions of the economic entities that are potentially going to be concentrated exceed certain limits determined by the Law. Concentration shall be prevented by the PCO, if the latter would result in new highly-concentrated economic entity which would be able to dominate in the market, i.e. would own no less than 40 per cent of market share.

The Law provides the exception in that the concentration of market structures which has not been approved by the PCO may be allowed in exceptional order through the written permission given by the Government of the Lithuanian Republic.

In 1993 the legitimate act "On the control of the concentration of market structures" is expected to be approved which should determine the rules of the control of concentration in detail.

D. Characterization of the application sphere of the Law

The Law applies to the regulation of the relations which arise from both the actions restricting competition and unfair competition throughout the territory of the Republic of Lithuania.

The Law on Competition which regulate functioning and economic relations of different economic areas provides that it is valid as much as it is not in contradiction with the other laws of the Lithuanian Republic. It means, that the Law on Competition regulates all types of economic - commercial activity with the appropriate exceptions provided by the other laws and international treaties.

E. Mechanism of application of the law and the basic rights of bodies

The supervision of the observance of the Law on Competition is carried out within the Republic of Lithuania by the PCO, the Director of which is appointed by the Government. The special Competition Council consisting of seven members appointed for a term of three years makes decisions on the issues related to the competition and regulated by this Law. Four members are appointed by the Government of the Lithuanian Republic on the basis of recommendations of consumers, as well as, scientific, business and industrial organizations.

The PCO makes investigations of the actions, which restrict competition (unfair competition) and reports conclusions to the Competition Council which makes decisions whether violations of the Law on Competition by the above-mentioned actions were taking place or not.

If the presumption proved correct, the Competition Council has a right to decide to apply economic sanctions to the economic entities. The volume of sanctions may be established up to 10 per cent of the total annual gross income of economic entities. Fines amounting up to 3 per cent of the total annual gross income may be imposed on economic entities for submission of misleading information. Moreover, the Competition Council has a right to impose fines equalling up to three months average earnings on officials of both the State Government bodies and economic entities for disregard of obligations made by the Competition Council or belated fulfilment of the latter, as well as for submission of misleading information. Fines imposed by the Competition Council shall be transferred to the State budget.

Sanctions for the violation of the Law on Competition applied to the economic entities are regulated by the standard acts in detail.

Decisions of the Competition Council may be appealed to the Court.

Losses incurred by the economic entities or consumers due to the violation of this Law and made by other economic entities must be recovered by the latter through the procedure established by the Law.

F. Description of the legitimate acts and agreements with the other countries

The order of application of the Law on Competition is provided by the Competition Council which possesses this right under the decision of the Parliament of the Lithuanian Republic, up to June 1993 the statutes of both the PCO and the Competition Council were approved by the Government of the Lithuanian Republic. The Competition Council has approved the resolution "On supervision of the practices of unfair competition".

We have a prevision to establish the rules of competition and collaboration order in the treaties on free trade concluded with individual countries, as well as countries-members of EFTA.

In the meanwhile, the competition rules and terms of collaboration have not entered into force in even one of the mentioned treaties.

G. Characterization of the general decisions and above - discussed specific problems

Since the PCO carries out its functions for four months only the annual report of its activities is not prepared yet. During this period the activities of the PCO has been carried out in the supervision of the Law on Competition and Price Law and the promotion of competition. The main concern assigned was to prepare the legitimate acts of the Law on Competition and the methodical materials, also to supervise the provisions of the Law on Competition. Analysis of markets in the main areas of the economy and investigations of complaints of the economic entities were the directions of

this supervision. After finishing these investigations the prepared materials were presented for the Competition Council who took the respective decisions. Since 11 February 1993 some amendments of the various laws of the Lithuanian Republic were proposed by the PCO. The PCO has obliged some economic entities to provide the financial and price reports to the Office. The most violations of the Law on Competition were made by economic entities in dominant positions. The sanctions and financial fines were assigned for some of them according to the Law on Competition.

Analysis of the markets in the main areas of economy is being carried out constantly.

The activities of the PCO will be turned to solving the competition issues also in the future.

H. Short bibliography describing the sources and essential decisions of the Laws

For your information, we offer the Law on Competition of the Republic of Lithuania translated into English, as well as the statutes of both the PCO and the Competition Council approved by the Government of Lithuanian Republic translated into English non-officially. We regret our lack of the official translations of the commentaries of both the legitimate acts.

Technical cooperation in the sphere of the competition policy

The main objective of the technical collaboration in the sphere of the Competition Policy is appropriation of experience of the competition institutions in the industrial countries of market economy as well as training the staff of the PCO of the Lithuanian Republic.

This objective was basically carried out through the entering into relations with the international organizations and appropriate competition institutions of the other countries.

Since November 1992 the relations were maintained with such international organizations as the Economic Commission of EEC, PHARE Foundation and OECD. We have also signed the agreement on cooperation with Denmark in the sphere of competition.

However, the most developed form of collaboration was the organizing of the workshops and training courses. Special benefits were gained by the employees of the PCO of the Lithuanian Republic through the two-week workshops that took place in Vilnius and were conducted by the specialists of the Antitrust Division of the United States Department of Justice and United States Federal Trade Commission. These workshops were attended not only by the employees of the PCO but also by the representatives of other ministries and departments.

Moreover, during the reporting period several employees of the PCO were given a possibility to extend their knowledge in spheres of competition policy at the workshops organized in Vien (they included the programmes on the market definition, abuse of dominant position, horizontal agreements).

The effect of these workshops and training courses was that the employees of the PCO were given everything necessary for the meeting problems of competition in foreign countries and sharing experience in solving specific cases.

It is essential to note a fact that such a cooperation was almost entirely provided with the funding from the sources of support.

The adviser of the competition institution of Denmark who fulfils a long-term mission in Lithuania was giving assistance to the employees of the PCO in solving current issues.

Moreover, the PCO of the Republic of Lithuania started to cooperate with the Antitrust Institution of the Republic of Poland. Recently, the project of the agreements is prepared on the cooperation with these countries in the sphere of competition and antitrust policies. They are expected to be signed at the nearest time.

However, it must be noted, that the cooperation with foreign countries in spheres of competition policy was not sufficiently developed during the past period. There was a lack of practice abroad and the closer cooperation with the competition institutions of the other countries.

II. Commentary by the Government of Norway on its "Competition Act" No. 65 of 11 June 1993

A. THE NEED FOR NEW LEGISLATION

A new Competition Act was passed on 11 June 1993. The Act will enter into force on 1 January 1994. From this date the Price Act, on which Norwegian price and competition policy has been based since 1953, will be repealed. 1/

The structure of economic trade and industry has radically changed since the 1950s. The demand for increased efficiency has led to bigger units and an increased concentration of commercial activity. Furthermore, the organization of the Government Administration as well as the means of economic policy have changed tremendously since the Price Act was passed. The purpose of the Price Act has been rather far-reaching, and its provisions bear to some extent evidence of being the means of the post-war economic policy.

The distribution of tasks and responsibility in price and competition policy is rapidly developing and changing. Price policy and price regulation matters are sometimes the responsibility of special authorities, as for instance the Directorate of Health concerning prices on medicine. On the other hand, the Norwegian Competition Authority has been given the duty of being initiator and the appropriate body entitled to comment on proposals circulated by other official authorities, in order to ascertain whether these proposals may affect competition policy.

Parallel with the Competition Act, the Price Policy Act of 11 June 1993 will take effect. The Price Policy Act provides authorization for price regulation. Moreover, it carries on the prohibition on unreasonable prices.

B. THE PURPOSE OF THE COMPETITION ACT

The purpose of the Competition Act is to "achieve efficient utilization of society's resources by providing the necessary conditions for effective competition". That means that efficient utilization of resources is the aim, whereas competition is considered to be the means of achieving this aim. By "efficient utilization of resources" is meant efficiency of national economy. It is the task for the Norwegian Competition Authority to see that business activity is based on effective competition, by preventing restraints on competition and stimulating price consciousness among consumers.

Prohibitions of collaboration on prices, collaboration on tenders and resale price maintenance have been supplemented by a prohibition on market sharing. The duty to provide information on price in connection with sales to consumers has been extended to encompass services in addition to goods.

Another important task will be to call attention to the restraining effects on competition of public measures, for instance by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

To achieve efficient utilization of society's resources by providing the necessary conditions for effective competition, is accepted to be one of the main presuppositions to ensure consumers fair prices, freedom of choice, and

the possibility to influence the supplies of goods and services. It is reasonable to believe that competition policy is an important basis to obtain crucial aims of consumer policy.

C. TERMS OF BUSINESS, AGREEMENTS AND ACTIONS TO BE CONTROLLED BY THE COMPETITION AUTHORITY

The Competition Act contains prohibitions on collaboration on prices, markups and discounts. These prohibitions apply in connection with the sale of services and goods, but not with purchase. However, there are general exceptions from the provisions involving prohibition. Furthermore, the Norwegian Competition Authority may grant exemption from the prohibitions.

It is forbidden for suppliers to fix or seek to influence recipients' prices. This provision applies both to goods and services. Nevertheless, an individual supplier may provide recommended prices for recipients' sales of goods or services, when the prices are explicitly defined as recommended.

The Act also provides the Competition Authority with the authority to intervene against agreements, terms of business and actions that may restrict competition.

1. Prohibitions

The prohibitions encompass both binding and recommended agreements or arrangements. There are prohibitions on:

Collaboration and influence on prices, markups and discounts

Collaboration and influence on tenders

Collaboration on, or use of influence to achieve, market sharing

The prohibition encompasses market sharing in the form of area division, customer division, quota distribution, specialization or limitation of quantity.

Prohibition of associated undertakings determining or encouraging restraints as mentioned above

2. Exceptions and exemptions

There are some general exceptions from the prohibitions mentioned under 1. These exceptions apply to:

Collaboration on individual projects and submitting a joint tender or offer for joint supply of goods or services

Collaboration between owner and company and companies with common owners

Patent and design licence agreements

The exception applies to restraints on competition that are determined between licenser and licensee by an agreement stipulating the licensee's right to utilization of a registered patent or design.

Collaboration on sales of agricultural, forestry and fisheries products

The Competition Authority may grant exemption from the prohibitions mentioned under 1 above. Exemption may be granted for example when the restraints on competition in question mean that competition in the market concerned would be increased, or when they would be of little significance for competition.

3. Intervention against harmful restrictions on competition

The Act provides the Competition Authority with the authority to intervene against agreements, terms of business and actions that may restrict competition. Among other things the Competition Authority may prohibit methods that maintain or strengthen a dominant position in the market, refusals to deal, limitations of customers' choices and restraints that make production, distribution or sales more expensive, or bar competitors from the market. Decisions concerning intervention may involve imposing prohibitions and orders, or granting conditional permission. Decisions may involve price regulation.

The Act also authorizes the Competition Authority to intervene against acquisition of enterprises.

4. Related legislation concerning competition

In addition to the Competition Act and the Price Policy Act, it is primarily "Markedsføringsloven" (the Act of controlling marketing and terms of agreement of 1972), that provides significant rules concerning restraints on competition. The purpose of the Act implies an obligation for people in business to act according to a standard of "fair business usage" and to avoid actions and marketing that may be harmful or unreasonable to consumers. Consumers' interests are also attended to by the Norwegian "Markedsrådet" (a market council) and the Consumer Ombudsman, these two Authorities forming the Norwegian consumer authorities. There are also established various committees of complaints to look after consumers' interests.

D. THE SUBSTANTIVE SCOPE AND THE TERRITORIAL EXTENT OF THE ACT

The Competition Act does not involve any significant changes with regard to substantive scope or territorial extent.

1. The substantive scope

The Competition Act applies to commercial activity of any nature, irrespective of the type of goods or services the activity concerns, and irrespective of whether it is private or carried out by central or local government authorities.

The Act does not apply to wage or working conditions in the service of others.

2. The territorial extent

Terms of business, agreements, and actions which have effect in the Realm of Norway are encompassed by the Act. However, the extent of the Act may be

broadened by agreement with a foreign State or an international organization. Such an agreement may also restrict the extent of the Act in a limited field.

E. ENFORCEMENT AND SUPERVISION OF THE RULES OF THE COMPETITION ACT

1. The duty to provide information and investigation

Everyone has a duty to provide the Competition Authority with the information it needs to carry out its work in accordance with the Competition Act. All types of business documents, minutes of meetings, notes as well as information from technical aids, can be requisitioned for investigation.

Information as mentioned above may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

2. Securing of evidence

In connection with suspicion of infringement of the Competition Act, the Competition Authority can demand access to enterprises to look for evidence itself. The court of examination and summary jurisdiction shall reach a decision concerning such securing of evidence.

The decision shall be reached without the person who is affected by the decision having the right to make a statement, and without his being informed of the decision before the securing of evidence is implemented.

3. Period penalty payment

In order to ensure that individual decisions pursuant to the Competition Act are adhered to, the Competition Authority can decide that the undertaking against which the decision is directed shall pay the State a period penalty payment until the situation is rectified. The Authority can for example impose a period penalty payment in cases where an order requiring annulment of a harmful restraint on competition is not obeyed.

4. Relinquishment of gain

In connection with infringement of the Competition Act the Competition Authority can issue a writ giving an option of relinquishment of the gain that has been obtained by infringement of the Act. Where it is impossible to establish the size of the gain, the amount shall be determined approximately. The Competition Authority's decision to issue a writ is not regarded as an individual decision pursuant to the Public Administration Act. Acceptance of the option is a basis for attachment. If the option is rejected by the recipient, the case can be submitted to the courts.

5. Penal provisions

In connection with infringement of the Competition Act the Competition Authority can report the case to the prosecuting authorities. Infringement of the Act is punishable by fining or imprisonment. A claim for relinquishment

of gain can be included as part of a criminal case. The penalty for infringement is, under aggravating circumstances, imprisonment for up to six years. Contribution to infringement is also punishable.

F. AGREEMENTS WITH FOREIGN STATES

The competition rules of the EEA Agreement have been made part of Norwegian competition legislation by the passing of a special Act of 27 November 1992, and will enter into force on the same day as the EEA Agreement.

The EEA Agreement provides for both an EFTA Court and an independent EFTA Surveillance Authority. An Agreement establishing these two institutions was signed on the same day as the EEA Agreement, on 2 May 1992 in Oporto, and will enter into force on the same day as the EEA Agreement. The main task of the EFTA Surveillance Authority will be to ensure that the EEA countries respect their obligations under the EEA Agreement, and that economic operators abide by the EEA rules relating to fair competition.

From 1991 Norway and the other EFTA countries have concluded agreement with several countries in central and eastern Europe and other countries. These agreements contain competition provisions concerning enterprises. The parties undertake to bring to an end restraints on competition which are incompatible with the agreements, such restraints being an obstacle to trade. In this context, the Norwegian Competition Authority has been given tasks. This also applies to bilateral free trade agreements that Norway has concluded with Estonia, Latvia and Lithuania.

III. Commentary by the Government of Portugal on its "Competition Act", Decree-Law No. 371/93 of 29 October 1993 2/

A. Description of the reasons for the introduction of the legislation

The purpose of the new law is to respond to the deep changes that have occurred in the structure and functioning of the Portuguese economy as a result of the liberalization, deregulation and privatization of important areas of economic activity, due to the advance of the European integration process and the increasing interpenetration of the economies.

B. Description of the objectives of the legislation

The Portuguese legislation for the defence and promotion of competition aims to integrate within a true framework of competitive policy the developments of an open economy, which is undergoing a growing process of internationalization and competitive dynamism, thereby contributing to the freedom of offer and demand and of access to the market, to the equilibrium of relations between economic agents, to the promotion of the general objectives of economic and to the safeguarding of consumers' interests.

C. Description of the practices, acts or behaviour, subject to control

(a) The type of control

Two kinds of control are provided in the competition Act:

- The restrictive behaviours on competition, namely agreements, concerted practices and the abuses of a dominant position or of economic dependence, are subject to the principle of prohibition unless considered justified by the criteria of economic balance;

- The concentrations of undertakings are submitted to the prior control mechanisms.

(b) The extent to which the practices are covered by this control

The competition Act prohibits the agreements, concerted practices, association decisions, abuse of a dominant position and abuse of economic dependence, which have as their object or effect the prevention, restriction or distortion of competition in the whole or part of the national market.

The concentrations of undertakings are prohibited if, in the market of specific goods or services, or a substantial part of it, they create or strengthen a dominant position in ways that are likely to prevent, restrict or distort competition.

D. Description of the scope of application of the legislation

(a) The competition Act applies to all economic activities, either lasting or occasional, undertaken in the private, public and cooperative sectors.

In the case of public services, this Act does not apply to undertakings that earn concessions granted by the State within the scope and terms of the concession contract.

(b) This Act applies to restrictions on competition which occur in the national territory or which may have an effect within it.

E. Description of the enforcement machinery

There are basically four bodies in Portugal which are responsible for competition policy: the Directorate-General for Competition and Prices, the Competition Council, the Courts and the Minister of Commerce.

The Directorate-General for Competition and Prices is an organ that is basically charged with the organization and carrying out of the inquiries into the matter of domestic anti-competitive practices and is responsible for the national representation in what concerns the activities developed by international organisms and institutions in matters relating to competition.

The Competition Council is an autonomous organ whose competences cover the making of decisions in the proceedings relative to restrictive competition practices and it is composed of a President, who is of the Magistracy or else of the Public Prosecutor's Office, and four or six permanent members appointed bearing in mind their recognized competence and capacity for the carrying out of the respective functions.

The Courts are the entities responsible for dealing with the appeals made against the decisions of the Competition Council.

The Minister of Commerce is the entity that is responsible for the taking of decisions in what concerns concentration operations, the decision being a joint one with the Minister responsible for the economic activities affected by the concentration, in cases of opposition or authorization subject to conditions and obligations.

F. Description of parallel or supplementary legislation

Besides Decree-Law No. 371/93, of 28 October 1993, there are several diplomas related to the enforcement of competition rules, namely:

- DL 433/82, of 27 October and DL 356/89, of 17 October that regulate the procedures in respect of agreements, concerted practices, decisions by associations and abuses of economic power.

- Code of Administrative Procedure, approved by DL 422/91 of 15 November. The procedure with respect to the control of concentrations is supplemented by the mentioned code.

- Portaria 1097/93, of 29 October establishes conditions by which the Competition Council may declare the legality or illegality of agreements and concerted practices between undertakings.

G. Description of the major decisions taken by administrative and/or judicial bodies

Since 1984, when the creation of the Competition Council took place, the entity that makes the decisions in questions relating to the defence of competition took 45 decisions relative to competition proceedings which have been sent to it by the Directorate-General for Competition and Prices.

In accordance with Decree-Law 371/93, an appeal may be made to the Judicial Courts as regards the decisions of the Competition Council. Between 1984 and 1993, 21 appeals have been made against the decisions of the Competition Council.

In what concerns the enforcement of merger regulation, the Minister of Commerce and Tourism was informed of 70 operations involving mergers, by the Directorate-General for Competition and Prices, that was an advisory body under the former law.

H. Bibliography

Related with the defence of competition, we may refer the following titles published in Portugal:

- Direito da Concorrência (aspectos gerais), 1982, 240 pp., by J. Simões Patrício.

- Da livre Concorrência à Defesa da Concorrência, História e conceitos base da legislação da defesa da concorrência 1985, 195 pp., by Maria do Rosário Rebordão Sobral e João Eduardo Pinto Ferreira.

- O Direito da Concorrência em Portugal, Legislação nacional da concorrência comentada e comparada com o direito comunitário e de vários países, 1986, 362 pp., by Maria Belmira Martins, Maria José Bicho e Azeem Remtula Bangy.

- Política Comunitária da Concorência. Um estimulo aos empresários portugueses, 1989, 235 pp., by Teresa Ricou, Eduardo Lopes Rodrigues.

- O Acto Único Europeu e a Política de Concorrência, 1990, 589 pp., by Eduardo Lopes Rodrigues.

Notes

1/ The Old Price Act of 1953 is contained in previous UNCTAD Handbook compilation of 14 August 1991, document TD/B/RBP/82.

2/ The previous legislation, Law No. 422/83 on the Defence of Competition, is contained in UNCTAD's compilation of the Handbook of 23 June 1993, document TD/B/RBP/49.

Annex I

LITHUANIA

A. Law on Competition of 1 November 1992

Chapter 1

General provisions

Article 1. Objectives

1. This Law shall regulate the relations which arise from activities of economic entities, officials representing them, and bodies of State authority or government which restrict competition or compete unfairly in the commodity markets of the Republic of Lithuania, as shall also define the responsibility for these activities if they violate the interests of the consumers or the economy.

The Law shall apply to the regulation of the relations throughout the territory of the Republic of Lithuania which result from competition - restricting activities or unfair competition, which the exception of relations regulated by other laws.

Article 2. Basic Definitions

Definitions of concepts used in this Law:

'Economic entities' - legal and natural persons engaged in commercial-economic activity, regardless of its character, the form of property and the type of enterprise.

'Goods' - the result of activity, i. e. production and service meant for realization.

'Market' - the aggregate of certain goods involved in purchase-sales processes on the territory and parts of the Republic whose qualities, used and price are compared in such a way that producers and consumers can substitute one for the other in the process of manufacturing and consumption.

'Competition' - emulation during which economic entities, by acting independently in the market, restrict one another's abilities to attain a dominant position in the market, and promote the production and increase the effectiveness of goods necessary to consumers.

'Dominant position' - the position of an economic entity in the market which allows for the possibility to unilaterally and decisively influence that market. The economic entity cannot be considered to have a dominant position if its market share of certain goods is no more than 40 per cent.

'Market concentration' - the merger of two or more economic entities or the acquisition by one economic entity of the right to have either all or part of the total capital of another economic entity at its disposal, as well as the conclusion of contracts which have influence over the managing decisions made by one of the economic entities, due to which a dominant position in the market is attained and competition is restricted.

Chapter 2

Activities which Restrict Competition

Article 3. Prohibition of Abusing the Dominant Position

1. Activities of economic entities having a dominant position in the market which restrict or may restrict competition by infringing economic interests shall be prohibited.

2. Economic entities shall be prohibited from engaging in the following activities which restrict competition:
1) creating hindrances for competing economic entities to enter the market or to develop the activities of already existing ones;
2) abusing a dominant position by excluding the competing economic entities from the market;
3) restraining production, decreasing the amount volumes of sales and purchase of goods, or suspending trade with the intention to create a shortage in the market or to influence prices, and consequently harming the consumers;
4) anticipating discriminating economic conditions in contracts of an identical nature with different partners; and
5) establishing fixed selling prices to the third persons in contracts with suppliers or purchasers.

Article 4. Prohibition of Agreements (Coordinated Activities) between Economic Entities which Restrict or Impede Competition

Agreements or coordinated activities between the competing economic entities (or potential competitors) shall be prohibited if they restrict or impede competition. Considered as such shall be agreements and coordinated activities concerning:
1) prices (including those established by auctions or tenders), discounts, markups and other payments;
2) volume of production;
3) division of the market according to territorial principle, volume of sales and purchases, types of goods, groups of purchasers and sellers, or otherwise;

4) restriction of other economic entities from being ousted from or entering into the market (or part of it); and
5) refusal of conclude a contract with certain sellers or purchasers.

Article 5. Exceptions to Prohibited Activities

The activities enumerated in Articles 3 and 4 of this Law may be considered to be agreement with the Law if it is proved that they result in:
1) steady reduction of consumer prices; or
2) improvement of the quality of goods.

Article 6. Prohibition of Bodies of State Authority and Government from Restricting Competition

1. Bodies of state authority and government shall be prohibited from adopting standard acts or carrying out activities which restrict the independence of economic entities or the conclusion of economic contracts, which impede the foundation, reorganization or restructuring of existing economic entities, or which grant privileges to or discriminate separate economic entities, or which otherwise restrict competition.

2. Heads of bodies of state authority and government shall be prohibited from taking up commercial - economic activities, owning personal enterprises, or holding position in managing bodies of economic entities.

Chapter 3

Unfair Competition

Article 7. Prohibition of Activities of Unfair Competition

Economic entities shall be prohibited from carrying out the following activities of unfair competition:
1) the propagation of misleading, inaccurate and distorted information (including advertisement) which may cause another economic entity or its reputation to suffer;
2) the misleading of consumers through false information regarding the quality of goods, the characteristics of utilization, the place and manner of production, and the amount and price of sale;
3) the willful use of the name, product name, trade-mark, marking, or form of product packaging or appearance of another economic entity; and
4) the acquisition, use and publishing without consent of information conserning the industrial and commercial acti-

vities and scientific - technical investigations and results of an economic entity.

CHAPTER 4
Control of Activities which are Unfair or which Restrict Competition

Article 8. The Institution of Price and Competition Control

The functions of supervision of observance of this Law as well as the Law on Prices within the Republic of Lithuania shall be executed by the Institution of Price and Competition, the director of which shall be appointed by the Government.

The Competition Council shall be formed to adopt decisions related to issues of prices and competition within the scope of this Law. The Competition Council shall consist of 7 members who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recommendations of consumer, scientific, business and industrial organizations, and the others shall be assigned from the Institution of Price and Competition. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote. The regulations of both the Competition Council and the Institution of Price and Competition shall be approved by the Government.

With the aim of protecting the economy and consumer rights, the Institution of Price and Competition shall observe the situation in the market and fluctuations of market prices, shall accumulate information concerning possibilities for meeting consumer needs, shall periodically provide recommendations to the Government on the formation of price policies, and shall perform other functions established in its regulations.

The Institution of Price and Competition shall have the right to obtain information from both economic entities and managing bodies as well as explanations - oral or written - which are necessary to carry out the functions established in this Law and in the regulations of the Institution.

Article 9. Powers of the Institution of Price and Competition

The Institution of Price and Competition, upon establishing that economic entities or managing bodies have violated this Law, shall compile material concerning the issue and present it to the Competition Council for the adoption of a

decision. On the basis of the Competition Council's decision, the Institution of Price and Competition may seek the termination of illegal practices through negotiations with the economic entity, if they have resulted minor negative changes (decrease in efficiency of production and distribution of goods, restriction of free trade) and provided that circumstances do not object to negotiation. Upon reaching an agreement, its results and terms for the termination of illegal practices shall be concluded in writing.

In other cases or if an agreement is not reached through negotiation, the Institution of Price and Competition has the right to:
1) obligate economic entities to terminate agreements and practices which violate the Law;
2) adopt a decision to lower the prices if they have increased as a consequence of practices prohibited in this Law;
3) obligate that illegal use of a company name, trade mark, product marking or inaccurate indication of a product's origin be terminated, and may detain goods due to those infringements; and
4) apply to either the Government of Lithuania or the court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

CHAPTER 5
Protection of Competition in the Process of Concentration of Market Structures

Article 10. Control of the Concentration of Market Structures

If by virtue of agreement or acquisition of a controlling interest the maximum concentration of market structures (concentration of capital), which is established by the Competition Council, is exceeded, the party or parties involved in the concentration must notify the Institution of Price and Competition before undertaking any steps which may alter permanent market structure and degree of its concentration.

The Institution of Price and Competition, upon receiving notification from the interested economic entities about a planned concentration of market structures, must adopt a decision concerning the granting of permission within one month.

Upon an agreement between the parties, the deadline for the adoption of the decision may be extended, but for no longer than 9 months.

If within the indicated periods of time the Institution of Price and Competition does not take a decision, the economic entities shall acquire the right to carry out the planned concentration of market structures.

Article 11. Permitted and Prohibited Concentrations of Market Structures

Upon the execution of a concentration of market structures which has not announced in advance and for which permission of the Institution of Price and Competition was not granted, economic sanctions prescribed by Article 12 of this Law shall be applied.

Permission to concentrate market structures which has not been approved by the Institution of Price and Competition may be granted by the written decision of the Government of the Republic of Lithuania. Such permission may be granted if the parties involved in the concentration provide substantiation proving that this action will result in the increase of economic efficiency of production or competitiveness of goods, which cannot be achieved in any ways other than by the suggested concentration of market structures.

CHAPTER 6
Responsibility for Violations of the Law

Article 12. Consequences of Violating the Law

Decisions of the bodies of State government regarding violation of the Law may be appealed to the court.

Economic entities, having violated this Law, must:
1) execute the institutions of the Institution of Price and Competition to discontinue the activities, restore the previous situation, terminate or alter the agreement, and fulfill other obligations;
2) recover the losses incurred by a partner; and
3) fulfill the sanctions imposed by the Competition Council as provided by this Law.

The Competition Council have the right to:
1) impose fines comprising up to 10 per cent of the total annual gross income on economic entities for infringement of Articles 3, 4, 7, 10 and 11 of this Law, nonobservance of the agreement concerning the termination of illegal practices, or intentional failure or untimely compliance with obligations and instructions;

2) impose fines amounting up to 3 per cent of the annual gross income on economic entities for submission of misleading information; and
3) impose fines equaling up to 3 months average earnings on officers of bodies of State government and economic entities for the intentional failure or untimely compliance with the directions issued by the Institution of Price and Competition as prescribed by this Law, or for submission of misleading information.

Article 13. Exaction of Fines

Fines shall be transferred to the State budget within one month of the date that the economic entity or officer receives the decision of the Institution of Price and Competition to impose a fine.

A fine shall be exacted from the income of an economic entity without suit.

Article 14. Appeal against Decisions of the Institution of Price and Competition

Economic entities, managing bodies and officers may, within one month of the date the decision of the Institution of Price and Competition is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions of the Institution of Price and Competition unless the court stipulates otherwise.

Decisions of the Institution of Price and Competition and their motives shall be publicly announced.

Article 15. Procedure of Recovering Losses

Losses incurred by economic entities or consumers due to violation of this Law must be compensated for in the procedure established by law.

Losses incurred by economic entities due to decisions made by bodies of State authority and government or the Institution of Price and Competition which violate the requirements of this Law shall be compensated with the funds of either the respective bodies of government or the State budget, and shall later be exacted from the violators.

Losses shall be exacted by suit.

Vytautas Landsbergis
President
Supreme Counsil
Republic of Lithuania
Vilnius
15 September 1992
No. 1-2878

Supreme Council of the Republic of Lithuania

RESOLUTION

on the Entry into Force of
the Law on Competition

The Supreme Council of the Republic of Lithuania resolves:

1. To establish that the Law on Competition shall enter into force on November 1, 1992.

2. To commission the Government of the Republic to prepare, prior to the enforcement of this Law, the executive acts required for its implementation and to approve the regulations of both the Competition Council and the Price and Competition Institution.

3. The commission the Ministry of Justice of the Republic of Lithuania to prepare a draft of amendments of the Code of Violations of Administrative Law which are connected with the enforcement of the Law on Competition.

4. To grant the Competition Council and the Price and Competition Institution the right to interpret the application of the Law on Competition.

Vytautas Landsbergis
President
Supreme Counsil
Republic of Lithuania
Vilnius,
15 September 1992
No. 1 - 2879

(Unofficial translation)

B. Decree No. 785 on the Price and Competition Office of the Republic of Lithuania

Regulations of State Price and Competition Office

I.General provisions

1. The State Price and Competition office shall be the executive body of the Republic of Lithuania in the fields of competition promotion and price policy (with the exception of direct state pricing control).

The State Price and Competition office shall develop and pursue the competition policy, exice control over unfair and competition restrictive activities within the territory of the Republic of Lithuania.

2. The activities of the State Price and Competition office shall be based on the Constitution of the Republic of Lithuania (The Provisional Basic Law), Law on Competition, Law on Prices and other laws, decrees and directives of the Government of Lithuania as well as these regulations.

The State Price and Competition office within its scope shall organize the enforcement of the Law on Competition, Law on Prices and other standard acts, generalize the ways of their application, provice proposals concerning the improvement of these laws and submit them to the Government of the Republic of Lithuania.

3. The State Price and Competition office shall be a legal person shall have the seal with the Lithuanian State Emblem and its name as well as accounts with the banks of Lithuania.
4. The representatives from separate districts of the Republic of Lithuania shall be included into the State Price and Competition office.

II. Objectives and functions of the State Price and Competition Office

5. The principal objectives of the State Price and Competition office shall be as follows:
5.1. formulation of the state policy which promotes competition and involves anti-monopolistic measures, participation in formulating the price policy which is directly regulated by state;
5.2. carrying out of supervising functions regarding the observance of the Law on Competition and Law on Prices, with the exception of direct price regulation implemented by the state;
5.3. coordination of the interests of both the Lithuanian economy and consumers by putting stop to:
5.3.1. abuses of dominant position;
5.3.2. anti-competitive agreements (coordinated activities) between economic entities;
5.3.3. restriction of competition by bodies of state authority and government;
5.3.4. activities of unfair competition;

5.3.5. unpermittable market concentrations;
5.4. provision of methodological and informational assistance regarding price and competition issues;
5.5. investigation of market structure, level of concentration and fluctuations of market prices;
5.6. interpretation of the Law on Competition.

6. The State Price and Competition office by realizing the commissioned objectives shall :

6.1. present proposals to the Government concerning formulation of the competition and price policy;
6.2. control application and execution of the Law on Competition and Law on Prices as well as other standard acts regarding the issues on competition and prices (with the exception of direct state pricing control);
6.3. prepare the draft laws and other standard acts on issues regarding competition and prices, within its scope make the examination of draft laws and other standard acts;
6.4. carry out investigations and prepare material concerning determination of dominant enterprises, abuse of dominant position, prohibited agreements, unfair Competition or mergers (amalgamations), provide proposals regarding charge of fines and application of sanctions upon violation of the Law on Competition as well as adoption of standard acts and submit them to the Competition Council for making decisions;
6.5. supervise and analyse the Lithuanian market structure, level of concentration, economic juncture, market price fluctuations and possibilities of meeting consumer needs, collect and analyse information about economic juncture of foreign markets, level of world prices and their dynamics, furnish information to state government institutions and interested economic entities;
6.6. supervise economic-financial activities of dominant enterprises;
6.7. present proposals to the Government regarding restructuring (splitting) of monopolic enterprises, which abuse dominant position;
6.8. within its scope provide methodological professional and informative assistance to legal and natural persons;
6.9. analyse written complaints of legal and natural persons on issues concerning competition and prices;
6.10. upon realization objectives and functions of the office organize and direct the work of its representatives in separate districts of the Republic of Lithuania;
6.11. upon investigation of problems related to competition and prices, maintain contacts with respective economic interstate organizations, foreign economic missions and international funds.

III. Rights and obligations of The State Price and Competition Office

7. The State Price and Competition office shall be entitled to:
7.1. from economic entities, government institutions and statistical organizations receive financial and other documents (or corresponding copies), information as well as oral or written explanations necessary for the realization of the objectives provided for in the regulations;
7.2. obligate dominant economic entities to notify in the established manner the State Price and Competition office about the prospective price change of goods and apply compulsory rules and order in establishing prices of goods;
7.3. within its scope issue standard acts;
7.4. publish information and carry on publishing-commercial activities regarding price and competition issues;
7.5. take part at the meetings of corresponding state government institutions, in which the issues in the field of competition and prices are discussed;
7.6. establish commissions and working groups comprising the representatives and specialists from ministries, other state institutions, local municipalities, scientific and training institutions as well as invite necessary experts and foreign specialists to analyse the issues regarding the work of the State Price and Competition office;
7.7. interpret the Law on Competition;
7.8. have the right to carry out market investigations and examinations according to the orders of economic entities and other natural and legal persons, establish tariffs for services;
7.9. organize the meetings of the Competition Council and inform about them the members of the Competition Council and other interested parties.

8. The State Price and Competition office shall be obliged to ensure security of economic entities and commercial secrets. Officials are responsible for that according to the order established by the laws of the Republic of Lithuania.

IV. Organization of work of the State Price and Competition Office

9. The State Price and Competition office shall be run by Director, which shall be appointed or relieved of his post by the Prime Minister of the Republic of Lithuania.

The Director of the State Price and Competition office shall have deputy directors, which are appointed or relieved of their posts upon the proposal of the Prime Minister of the Republic of Lithuania.

10. The Director of the State Price and Competition office shall:

10.1. be personally responsible for realizing the commissioned objectives;

10.2. confirm the structure and staff of the office, fix the salaries not exceeding the wage fund settled by the Government of the Republic of Lithuania;

10.3. approve the regulations (bylaws) of the subdivisions of the office;

10.4. accept for a job and dismiss heads of the subdivisions and employees of the office;

10.5. impose disciplinary punishments or inducements for the employees of the office;

10.6. exercise other powers provided for by the laws.

11. The functions of the Director shall be performed by one of the deputy directors in case the Director is absent.

12. The State Price and Competition office, taking into account the existing laws of the Republic of Lithuania, decrees and directives of the Government of the Republic of Lithuania and upon execution of them shall issue decrees, instructions and other acts as well as organize and control their enforcement. If necessary, the State Price and Competition office in cooperation with other ministries, departments and state institutions shall issue common standard acts. All the standard acts of the State Price and Competition office adopted by the Competition Council shall be compulsory to the ministries, departments, state institutions, government bodies of municipalities and economic entities.

3.3. approvement of the list of goods markets and dominant enterprises;
3.4. upon adoption of decisions the Competition Council shall observe the following principles:
3.4.1. defence of the interests of the consumers and economy of Lithuania;
3.4.2. prohibition from abusing a dominant position;
3.4.3. prohibition of agreements (coordinated activities) which restrict or impede competition;
3.4.4. prohibition of bodies of state authority and Government from restricting competition;
3.4.5. prohibition from unfair competition activities;
3.4.6. protection of competition upon concentration of market structures.

III. Rights of the Competition Council

4. The Competition Council after having analysed the material provided by the State Price and Competition office shall be entitled to:
4.1. adopt the decisions on the violations of the Law on Competition, which are as follows:
4.1.1. abuse of a dominant position;
4.1.2. agreements (coordinated activities) between economic entities which restrict or impede competition;
4.1.3. restriction of competition by bodies of state authority and government;
4.1.4. unfair competition;
4.1.5. concentration of market structures;
4.2. after having determined the violations of the Law on Competition, which have been commited by the officials of the state government institutions and economic entities, apply the following sanctions:
4.2.1. impose fines comprising up to 10 per sent of the total annual gross income on economic subjects for infringements provided for in paragraphs 7.1.1, 7.1.2, 7.1.4 and 7.1.5, non observance of the agreement concerning the termination of illegal activities, intentional failure or untimely compliance with obligations and instructions;

4.2.2. impose fines amounting up to 3 per cent of the annual gross income on economic entities for submission of misleading information;
4.2.3. impose fines equaling up to 3 months average earnings on officers of bodies of state government and economic entities for the intentional failure or untimely compliance with the directions issued by the State Price and Competition office pursuant to the Law on Competition, or for submission of misleading information;
4.2.4. obligate economic entities to terminate agreements and practices which violate the Law on Competition;
4.2.5. obligate to lower the prices if they have increased as a consequence of practices prohibited in this Law;
4.2.6. obligate to terminate the illegal use of a company name, trade mark, product marking or innacurate indication of a product's origin, or to detain goods are to those infringements;
4.2.7. apply to either the Government of Lithuania or the Court to terminate illegal practices of managing bodies or to repeal the adopted decisions.

5. The Competition Council shall hold conferences, symposiums and seminars on issues concerning the supervision of the Law on Competition and competition policy, in which representatives from government institutions shall participate.

6. Within its powers, the Competition Council shall grant the right to the State Price and Competition office to analyse some issues concerning competition and adopt decisions.

IV. Organization of work of the Competition Council

7. The Competition Council shall consist of 7 members, who shall be appointed by the Government for a term of 3 years. At least 4 of the members shall be appointed taking into account the recomendations of consumer, scientific, business and industrial organizations, one shall be assigned from the

Department of State Control, and the others, on the proposal of the office, from the State Price and Competition office.

8. The Competition Council shall be headed by the Chairman, if he is absent - by the deputy chairman. The deputy chairman shall be elected by the Competition Council by majority vote, if the meeting is attended by no less than 3 members.

9. The Chairman of the Competition Council shall be appointed by Prime Minister of the Republic of Lithuania.

10. The Competition Council shall adopt the decisions related to the application of the Law by a 2/3 majority vote of the members present at the meeting, if it is attended by no less than 5 members of the Council. The decisions shall be accpted by a nominal vote. Under equal number of votes, the decision shall be adopted by the chairman of the Competition Council.

11. Means for the remuneration of the work of the members of the Competition Council shall be included into the maintenance assignments of the State Price and Competition office.

12. The meetings of the State Price and Competition office shall be held, if necessary, on the iniciative of the State Price and Competition office but not less than once a month.

13. All the interested parties shall have the right to attend the meetings of the Competition Council. In case of need the Competition Council may decide to hold a closed meeting.

14. The State Price and Competition office shall announce about the meeting the Competition Council and the issues to be discussed to the members of the Competition Council and interested parties not later than within 5 days.

15. The material of the Competition Council shall be drawn up by the protocol, which shall be signed by the Chairman of the Competition Council and the secretary of the meeting.

16. The Competition Council shall interpret the Law on Competition of the Republic of Lithuania and adopt decisions, which shall be presented as decrees. The interpretations and decrees of the Competition Council shall be obligatory to economic entities, governments institutions and officers.

17. Decisions of the State Price and Competition office and their motives shall be publicly announced.

18. Economic entities, managing bodies and officers may, within one month of the date the decision of the State Price and Competition office is received, apply to the court to revoke or alter the said decision and recover losses.

Appeals to the court shall not suspend compliance with directions and decisions of the State Price and Competition office, unless the court stipulates otherwise.

(Unofficial translation)

14.10.93

Annex II

NORWAY

A. Act No. 65 of 11 June 1993 relating to Competition in Commercial Activity (the Competition Act)

CHAPTER 1 INTRODUCTORY PROVISIONS

Section 1-1 The purpose of the Act

The purpose of the Act is to achieve efficient utilization of society's resources by providing the necessary conditions for effective competition.

Section 1-2 Definitions

a) By "commercial activity" in this Act is meant any kind of economic activity, permanent or occasional, which is carried out against payment. By "undertaking" is meant any individual or enterprise that engages in commercial activities.

b) By "group of companies" in this Act is meant an ownership structure whereby a company owns so many stocks or shares in another company that it represents a majority of the votes. The former company is regarded as the parent company and the latter as a subsidiary. A company is also regarded as belonging to a group of companies when a parent company along with a subsidiary, or when one or more subsidiaries together, own as many stocks or shares as mentioned in the first sentence.

c) By "price" in this Act is meant any kind of payment, regardless of whether other terms such as remuneration, fee, emolument, freightage, rate, rent or the like are used.

d) By "goods" in this Act is meant real estate and movables, including ships, aircraft, gas, electricity and other energy carriers.

e) By "services" in this Act is meant all services, including rights, which are not goods.

Section 1-3 The substantive scope of the Act

The Act applies to any kind of commercial activity, regardless of the kind of goods or services the activity concerns, and irrespective of whether it is private or carried out by central or local government authorities.

The Act does not apply to wage or working conditions in the service of others.

Section 1-4 Relationship to decisions by the Storting and other Acts

Provisions issued pursuant to this Act must not conflict with decisions passed by the Storting. Where a matter that comes under this Act also comes under provisions concerning regulation and supervision in other Acts, the King may issue specific provisions for the mutual limitation of jurisdiction of the authorities involved.

Section 1-5 The territorial extent of the Act

The Act applies to terms of business, agreements, and actions which have effect, or are liable to have effect, in the Realm of Norway.

Insofar as they only have effect, or are liable to have effect, outside the Realm, terms of business, agreements, and actions are not covered by the Act unless the King so decides.

The extent of the Act may be broadened by agreement with a foreign State or an international organization. Such an agreement may also restrict the extent of the Act in a limited field.

The King shall decide whether and to what extent provisions issued in, or pursuant to, this Act shall apply to Svalbard.

Section 1-6 The duration of decisions pursuant to the Act

In general decisions pursuant to this Act shall have effect for a specified period. The effective period for each decision shall normally not exceed 5 years, and never be longer than ten years. Decisions may be renewed.

CHAPTER 2 THE ORGANIZATION AND DUTIES OF THE COMPETITION AUTHORITIES

Section 2-1 The organization of the competition authorities

The competition authorities are the King, the Ministry and the Norwegian Competition Authority (hereafter referred to as the Competition Authority).

The Competition Authority is responsible for day-to-day supervision in accordance with this Act. The King may issue specific provisions concerning the organization and activities of the Competition Authority, including determining that public or private bodies or individuals shall assist the Authority.

The day-to-day management of the Competition Authority shall be the responsibility of the Director General of the Authority.

Section 2-2 The duties of the competition authorities

The competition authorities shall supervise competition in the various markets. Among other things they shall:

a) Check that the prohibitions and requirements of the Act are adhered to and grant exemptions where the purpose of the Act calls for this.

b) Intervene where necessary against anti-competitive behaviour and acquisition of enterprises.

c) Implement measures to increase the markets' transparency.

d) Call attention to the restraining effects on competition of public measures, where appropriate by submitting proposals aimed at increasing competition and facilitating entry for new competitors.

e) When required, assist other authorities in monitoring adherence to other rules where infringements may have harmful effects on market and competition conditions.

CHAPTER 3 PROHIBITION OF, AND INTERVENTION AGAINST, RESTRAINTS ON COMPETITION. EXCEPTIONS AND EXEMPTIONS

Section 3-1 Prohibition of collaboration and influence on prices, markups and discounts

Two or more undertakings must not, in connection with the sale of goods or services by agreement or concerted practices, or by any other conduct liable to influence competition, fix or seek to influence prices, markups or discounts except for normal cash discounts. By "normal cash discounts" is meant discounts in connection with cash payment or payment within 30 days. A rate of over 3 per cent shall in no case be regarded as a normal cash discount.

Likewise, one or more suppliers of goods must not fix or seek to influence prices, discounts or markups for the recipients' sale of goods or services.

The prohibitions in the first and second paragraphs also encompass guidelines with contents that are contrary to these paragraphs. The prohibitions encompass both binding and recommended agreements or arrangements.

The prohibitions in the second and third paragraphs shall not prevent the individual supplier of goods from providing recommended prices for the recipients' sale of goods or services. In all such communications the supplier must explicitly define such prices as recommended.

Undertakings must not influence suppliers with respect to the calculation of recommended prices.

Section 3-2 Prohibition of collaboration and influence on tenders

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by other conduct liable to influence competition, fix or seek to influence prices, calculations of volume or other terms connected with tenders, allocation of tenders, or direct or seek to induce any undertaking to abstain from submitting a tender.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

Section 3-3 Prohibition of collaboration on, or use of influence to achieve, market sharing

Two or more undertakings must not, in connection with the sale of goods or services by agreement, concerted practices or by any other conduct liable to influence competition, fix or seek by using influence to achieve market sharing in the form of area division, customer division, quota distribution, specialization or limitation of quantity.

The prohibition in the first paragraph also encompasses guidelines with contents that are contrary to the first paragraph. The prohibition encompasses both binding and recommended agreements or arrangements.

The provisions of this Section shall not prevent an individual supplier from agreeing market sharing with, or determining market sharing for, his recipients.

Section 3-4 Prohibition of associated undertakings determining or encouraging restraints

Associations of undertakings must not themselves determine or encourage restraints mentioned in Sections 3-1 to 3-3 or restraints that conflict with decisions under Sections 3-8 to 3-10.

The prohibition in the first paragraph applies correspondingly to board members, employees' representatives and employees in such associations.

Section 3-5 Exceptions in connection with joint projects

The prohibitions in Sections 3-1, 3-2 and 3-4 shall not prevent two or more undertakings collaborating on individual projects and submitting a joint tender or offer for joint supply of goods or services.

This exception applies only where it is made clear in the offer what the collaboration involves and who the collaborating parties are.

Section 3-6 Exceptions for collaboration between owner and company and companies with common owners

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints between owner and company where the owner has more than 50 per cent of stocks, shares or corresponding equity stakes giving voting rights. This exception also applies to collaboration and restraints between companies in the same group of companies.

Section 3-7 Exceptions for patent and design licence agreements

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not apply to restraints on competition that are determined between licenser and licensee by an agreement stipulating the licensee's right to utilization of a registered patent or design.

Section 3-8 Exceptions for collaboration on sales of agricultural, forestry and fisheries products

The prohibitions in Sections 3-1, 3-3 and 3-4 shall not prevent collaboration or restraints in connection with the sale or supply of Norwegian agricultural, forestry or fisheries products from producers or producers' organizations in agriculture, forestry or fisheries.

Section 3-9 Exemptions from the prohibitions of the Act

The Competition Authority may, through individual decisions or regulations, grant exemption from the prohibitions in Sections 3-1 to 3-4 provided that:

a) restraints on competition mean that competition in the market concerned will be increased,

b) increased efficiency must be expected to more than compensate for the loss due to restriction of competition,

c) restraints on competition have little significance for competition, or

d) there are special grounds for doing so.

Conditions may be imposed for exemption.

Exemption may be revoked if the conditions for exemption are not fulfilled or the prerequisite for exemption is no longer present.

Section 3-10 Intervention against anti-competitive behaviour

The Competition Authority may intervene against terms of business, agreements and actions where the Authority finds that these have the purpose or effect of restricting, or are liable to restrict, competition contrary to the purpose of Section 1-1 of the Act.

The first paragraph encompasses for example terms of business, agreements and actions that can:

a) maintain or strengthen a dominant position in a market with the help of anti-competitive methods, or

b) restrict clients' choices, make production, distribution or sales more expensive, bar competitors, refuse dealing with or deny membership of associations of undertakings.

By refusal to deal is also meant that an undertaking is only willing to engage in trading activities on specific terms.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. The decision may also involve regulation of undertakings' prices.

Decisions intended for municipal or county-municipal bodies shall be made by the King.

Section 3-11 Intervention against acquisition of enterprises

The Competition Authority may intervene against acquisition of enterprises where the Authority finds that the acquisition in question will create, or strengthen, a significant restriction of competition contrary to the purpose of Section 1-1.

By acquisition is also meant mergers, acquisition of stocks or shares and partial acquisition of enterprises.

Decisions concerning intervention may involve imposing a prohibition or order, as well as granting conditional permission. Among other things the Competition Authority may:

a) prohibit acquisition of the enterprise and issue such provisions as are necessary for achievement of the purpose of the prohibition,

b) require disposal of stocks or shares acquired as a stage in the acquisition of the enterprise, or

c) stipulate such conditions as are necessary to counteract the acquisition of the enterprise restricting competition contrary to the purpose of efficient utilization of resources; cf. Section 1-1.

Before intervention can be carried out under this Section, the Competition Authority must have attempted to arrive at an amicable solution with the undertaking or undertakings.

The Competition Authority may intervene against acquisition of enterprises within six months after such an agreement on acquisition has been concluded. Where special grounds so indicate, the Authority may intervene within one year of the same date.

Undertakings that wish to ascertain whether intervention is to be expected may notify the final agreement on acquisition to the Competition Authority. Should the Authority, within three months of receiving such notification, not advise that intervention may take place, it cannot decide to intervene under the terms of this Section. Should the Authority advise that intervention will take place, the time limits in the fifth paragraph will apply in the normal manner to the Authority's further procedure.

The time limits that are imposed in this Section are of no significance for procedure concerning complaints. The Competition Authority may issue specific provisions concerning notification arrangements in the sixth paragraph.

CHAPTER 4 PRICE-LABELLING AND INFORMATION TO THE PUBLIC

Section 4-1 Price-labelling etc.

Undertakings that sell goods retail to consumers shall, as far as practically possible, provide information on prices so that they can be easily seen by customers. The same applies to the sale of services to consumers.

Through individual decisions or regulations the Competition Authority may issue specific provisions for the implementation of the duty to provide price information under the first paragraph, and similarly it may make exceptions from this duty.

In order to facilitate customers' assessment of the prices and quality of goods and services, the Competition Authority may also require undertakings to implement measures in addition to those resulting from the requirements of the first paragraph. Decisions concerning information measures may for example involve a duty to carry out labelling, to hang up notices or to provide other information on prices, business terms, quality and other properties. The decision may also entail imposing requirements for sorting and provisions for measurement and weight and information on price per unit of measurement (unit prices) for goods that are offered for sale.

Section 4-2 Information to the public concerning restraints on competition

In order to carry out its duties in accordance with this Act, the competition authorities may, irrespective of the rules concerning confidentiality in Section 13 first paragraph item 2 of the Public Administration Act, publicize information on terms of business and collaboration that have the purpose or effect of restricting competition. The undertaking's legitimate interest in maintaining its business secrets must be taken into account. Information to the public under the provisions of the first sentence shall nevertheless not apply to information concerning technical devices or procedures.

CHAPTER 5 EFFECTS IN RELATION TO CIVIL LAW

Section 5-1 Invalidity

Agreements that conflict with prohibitions under this Act are invalid between the parties.

Such invalidity only applies to the extent that prohibitions in this Act are infringed, unless under Section 36 of the Contracts Act it would be unreasonable to make the rest of the agreement valid.

CHAPTER 6 THE DUTY TO PROVIDE INFORMATION AND SANCTIONS

Section 6-1 The duty to provide information and investigation

All are required to give the competition authorities the information demanded by these authorities in order to perform their tasks in accordance with the Act, including the investigation of any possible infringement of this Act or decisions pursuant to this Act, or the investigation of other price and competition conditions. It may be required that such information be given in written or oral form within a specified time limit both by individuals, undertakings and by groups of undertakings.

On the same conditions as those stated in the first paragraph, the competition authorities may, for the purpose of investigation, demand that all types of business documents, minutes of meetings and other written material be handed over to them.

The competition authorities shall be given access to computers or other technical aids in order to gain access to information that is available through the use of such aids.

Information required in accordance with the first paragraph may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

The duty to provide information and submit to investigation applies even if a decision to secure evidence as stated in Section 6-2 has been made.

The King may issue specific provisions concerning the duty to provide information and investigation.

Section 6-2 Securing of evidence

When there are reasonable grounds for assuming that this Act or decisions pursuant to this Act have been infringed, the Competition Authority may demand access to real property, fittings and other movables in order to look for evidence. The competition authorities may confiscate such evidence for closer investigation if necessary.

An application for permission to secure evidence must be submitted by the Competition Authority to the court of examination and summary jurisdiction. The case shall be brought before the court of examination and summary jurisdiction at the place where it is most practical to do so. The court shall reach a summary decision. The decision shall be reached without the person who is affected by the decision having the right to make a statement, and without his being informed of the decision before the securing of evidence is implemented. An appeal

against the decision shall have no postponing effect on its implementation. Sections 200, 201 first paragraph, Sections 117-120 cf. Sections 204, 207, 208, 209, 213 and Chapter 26 of the Criminal Procedure Act shall apply correspondingly.

The Competition Authority may require assistance by the police to implement the decision concerning securing of evidence.

Where there is no time to await the decision of the court, the Competition Authority may demand that the police close off those areas where the evidence may be located, until the court's decision is given.

The King may issue specific provisions for the securing of evidence and treatment of surplus information.

Section 6-3 Examination of documents

In relation to the Competition Authority no one has right of access to information, documents or other evidence in cases concerning infringement of this Act or decisions pursuant to this Act obtained in accordance with Sections 6-1 or 6-2. When the Competition Authority has issued a writ giving an option of relinquishment of gain under Section 6-5, the provisions of the Public Administration Act concerning the right of the parties to acquaint themselves with the documents in the case shall apply.

Section 6-4 Period penalty payment

In order to ensure that individual decisions pursuant to this Act are adhered to, the Competition Authority may determine that the undertaking against which the decision is directed shall pay a period penalty payment to the State until the situation has been rectified.

The penalty shall not take effect before the time limit for appeal has passed. If the decision is appealed against, no penalty shall take effect before the appeal is decided.

The decision to impose period penalty payments is a basis for attachment.

Section 6-5 Relinquishment of gain

Where a gain has been achieved by infringement of this Act or decisions pursuant to this Act, the undertaking which has made such a gain may be required wholly or partly to relinquish it. This shall also apply when the undertaking which makes the gain is different from the offender. Where it is impossible to establish the size of the gain, the amount shall be determined approximately.

Where the undertaking is a company that is part of a group of companies, the company's parent company and the parent company of the group of companies to which the company belongs shall bear a secondary liability for the amount.

The Competition Authority may issue a writ giving an option of relinquishment of gain in accordance with this Section. The decision to issue such a writ shall not be regarded as an individual decision pursuant to the Public Administration Act. The writ shall have a time limit for acceptance of up to two months. Acceptance of the option is a basis for attachment. If the option is not accepted the Competition Authority may, within three months of the expiry of the time limit for acceptance, bring action against the undertaking in the judicial district where the undertaking may be sued. The case shall be dealt with in accordance with the Act relating to Judicial Procedure in Civil Cases. Mediation in the conciliation board is not necessary.

The right to claim relinquishment of gain is statute-barred after ten years. Further, the provisions of the Act No. 18 of 18 May 1979 relating to the Limitation of Claims shall be applied to the extent that they are appropriate.

Where the infringement is dealt with by the prosecuting authority or the court pursuant to the Act No. 25 of 22 May 1981 relating to Legal Procedure in Criminal Cases, the claim for relinquishment of gain may be included as a claim for confiscation under Section 34 of the Penal Code.

Section 6-6 Penal provisions

Any person shall be liable to fines or to imprisonment for up to three years who intentionally or negligently:

a) infringes Sections 3-1, 3-2, 3-3, 3-4 or 4-1 first paragraph,

b) infringes decisions pursuant to Sections 3-10, 3-11 or 4-1 second paragraph,

c) fails to comply with orders pursuant to Sections 6-1 or 6-2,

d) gives incorrect or incomplete information to the competition authorities, or

e) contributes to infringement as stated in litrae a to d.

Under aggravating circumstances imprisonment for up to six years may be imposed. When deciding whether aggravating circumstances exist, emphasis shall be placed among other things on the danger of substantial damage or inconvenience, the gain expected from the infringement, the extent and duration of the infringement, the degree of guilt demonstrated, whether an attempt was made to conceal the infringement by using falsified accounts or similar documents, and whether the offender has previously been convicted of any infringement of legislation concerning economic regulation.

Section 6-7 Res judicata

Where an option has been accepted or judgement has been passed that is legally binding under Section 6-5, no action may be brought under Section 6-6 for the same infringement. Similarly no action may be brought under Section 6-5 where a legally binding decision exists under Section 6-6 or Section 34 of the Penal Code.

CHAPTER 7 ENTRY INTO FORCE AND TRANSITIONAL PROVISIONS, REPEAL AND AMENDMENT OF OTHER ACTS

Section 7-1 Entry into force

The Act shall enter into force from the date decided by the King.

Section 7-2 Transitional provisions

Administrative regulations, rules and directives pursuant to Acts that have been repealed under Section 7-3 No. 2 and No. 3 shall still apply to the extent that they are appropriate, until the King repeals or amends them pursuant to this Act, pursuant to the Act relating to Price Policy or by special provision.

Individual decisions pursuant to the Act No. 4 of 26 June 1953 relating to Control of Prices, Profits and Restraints on Competition and the Act No. 3 of 9 July 1948 relating to Maintenance of Price and Rationing Regulations etc. shall be maintained in the period stipulated in the decisions until they are amended or repealed pursuant to this Act or by special provision of the King.

In addition the King may issue such transitional provisions as are necessary.

Section 7-3 Repeal and amendment of other Acts

When this Act enters into force, the following Acts shall be repealed or amended:

(Unofficial translation)

25.11.93

NORWAY

B. Act No. 66 of 11 June 1993 relating to Price Policy (The Price Policy Act)

Section 1 Authorization of price regulation

When it is necessary in order to promote socially justifiable price developements, the King may make:

1) decisions on maximum prices, minimum prices, price freezes, price calculations, discounts, maximum markups, delivery and payment terms and other provisions on prices, profit margins and terms of business, or
2) decisions on the obligation to notify changes in the quantities in item 1.

The King shall submit reports to the Storting concerning particularly important regulations made in accordance with the first paragraph.

Section 2 Unreasonable prices and terms of business

It is prohibited to take, demand or agree on prices that are unreasonable. Nor shall terms of business that have an unreasonable effect on the other party, or that obviously conflict with the general interest, be demanded, agreed on or maintained.

By "price" in this Act is meant any kind of payment, regardless of whether other terms such as remuneration, fee, emolument, freightage, rate, rent or the like are used.

Section 3 Supervisory authorities and the duty to provide information

The Norwegian Competition Authority or whoever the King decides shall check that Section 2 and decisions pursuant to Section 1 are adhered to. The King may issue specific provisions concerning how the supervision shall be carried out.

All are required to give the supervisory authorities the information and hand over the documents for investigation demanded by these authorities in order to perform their tasks in accordance with the Act, including the investigation of any possible infringement of this Act or decisions pursuant to this Act, or the investigation of other price conditions etc. It may be required that such information be given in written or oral form within a specified time limit both by individuals, undertakings and by groups of undertakings. If necessary the police may be required to assist in ensuring submission of the material that the supervisory authorities have need of.

The person under supervision is obliged to allow the supervisory authorities to inspect enterprises, other real properties and movables.

The supervisory authorities shall be given access to computers or other technical aids in order to gain access to information that is available through the use of such aids.

Information required in accordance with the second paragraph may be given irrespective of the duty of secrecy which otherwise is imposed on the tax assessment authorities, other tax authorities and authorities which have a duty to supervise public regulation of commercial activity. Nor shall such a duty of secrecy prevent documents in the possession of such authorities from being handed over for investigation.

Section 4 Penal provisions

Any person shall be liable to fines or to imprisonment for up to three years who intentionally or negligently:

a) infringes Section 2 of this Act or decisions pursuant to Section 1 of this Act,
b) fails to comply with orders to provide information and/or to collaborate in investigation pursuant to Section 3,
c) gives incorrect or incomplete information to the supervisory authorities, or
d) contributes to infringement as stated in litrae a to c.

A person who has purchased an object or right or received a service on illegal terms may only be punished for complicity if he or she has incited or misled someone to commit the infringement.

Under aggravating circumstances imprisonment for up to six years may be imposed. When deciding whether aggravating circumstances exist, emphasis shall be placed among other things on the danger of substantial damage or inconvenience, the gain expected from the infringement, the extent and duration of the infringement, the degree of guilt demonstrated, whether an attempt was made to conceal the infringement by using falsified accounts or similar documents, and whether the offender has previously been convicted of any infringement of legislation concerning economic regulation.

In a provision issued pursuant to Section 1 it may be prescribed an infringement of the provision shall not be punishable.

Section 5 Confiscation

Where someone has taken a higher price than is legally permissible under the provisions made in, or pursuant to, this Act, an amount may be confiscated which is assumed to correspond to the additional price obtained. This applies regardless of whether the situation may involve criminal liability.

Confiscation of the additional price shall be effected either from the person who has taken the illegal price, or from the party he or she has acted on behalf of or to the advantage of, or from both.

Deduction shall be made for the amount that the person liable has paid back to the injured party, or that the person liable is obliged by the judgement or the writ giving an option of confiscation to pay back.

Where a public tax has been paid on the amount confiscated, a deduction shall be made corresponding to the tax paid.

Where the person liable is a company that is part of a group of companies, the company's parent company and the parent company of the group of companies to which the company belongs shall bear a secondary liability for the amount confiscated. By "group of companies" here is meant enterprises that are a part of an ownership structure as stated in Section 1-2 of the Companies Act and Section 1-2 first paragraph litra h; cf. the second paragraph, of the Act relating to General Partnerships, etc.

The right to bring an action claiming confiscation under this Section shall lapse when ten years have expired since the additional price was obtained.

Section 6 Repayment of illegal additional price

A person who has paid a higher price than is lawful may demand that the excess price be repaid if he or she cannot under the circumstances be said to have a significant degree of co-liability for the infringement.

Any demand that the agreed price shall be reduced to a lawful price, or any demand for repayment of the excess price, shall not give the second party the right to annul the agreement where:

1) it is a matter of commercial sales of objects or services to consumers, or
2) annulment would seem unreasonable taking into account the degree of guilt demonstrated by both parties and circumstances in general.

Section 7 Entry into force, etc.

The Act shall enter into force from the date decided by the King.

The King shall decide whether and to what extent provisions issued in, or pursuant to, this Act shall apply to Svalbard.

Section 8 Amendment of other Acts

When this Act enters into force, the following amendments shall be made to other Acts:

Annex III

PORTUGAL

Decree-Law No. 371/93 of the 29 October 1993 on protection and promotion of competition

After 9 years in force, Decree-Law No.422/83 of 3 December has in general terms achieved the aims laid down when it was published. But it now requires amendment to accommodate it better to the new national and international context and to enable its aims to be implemented more effectively, thereby fulfilling the requirements of paragraph f) of Article 81 of the Constitution.

Profound changes have in fact taken place in the structure and functioning of the Portuguese economy through the liberalisation, deregulation and privatisation of important areas of economic activity, through advances in the process of European integration and through the appearance of new players who have brought about important changes in the business sector and have altered the relations between market forces.

The growing interaction between economies and the integration of national markets have made rationalisation between different national competition policies essential and an indispensable condition for the promotion of competitiveness in national economies.

This Act aims to integrate within a legal framework for competition policy the specific development of an open economy that is involved in the developing process of internationalisation and the drive for competition and which will contribute to the unhindered formation of supply and demand and market access, to balance in the relations between economic undertakings, to the encouragement of the general aims of economic and social development, to an increase in the competitiveness of business undertakings, and to safeguards for the interests of consumers.

The Act includes, therefore, innovative aspects which are marked by a global and systematic character which guarantees their essential coherence.

Thus, in addition to dealing with restrictions on competition, this Act is concerned with concentrations of undertakings and addresses the matter of State aid, filling in the framework set by the main instruments of Community policy for the protection of competition.

With respect to restrictive practices on competition, it is important to point out the introduction of the concept of economic dependence. Abuse in taking advantage of economic dependence was considered a restriction on competition only if it was practised by undertakings which had a dominant position in the market for goods or services. This prevented the imposition of sanctions if the abuse was practised by undertakings which had great economic power but which did not hold a dominant position in their market. It is stressed, however, that the object in creating this concept is to punish abuse, not conduct that is aimed at more effective competition, such as results from adopting better business conditions.

The rules for prior notification of the establishment of concentrations of undertakings, until now regulated by Decree-Law No.428/88 of 19 November, have undergone profound changes. Following closely (EEC) Regulation No.4064/89, of the Council, of 21 December 1989, published subsequent to that Decree-Law, the procedures have been modified, the scope of application has been widened and difficulties of interpretation arising from the previous Act have been resolved. At the same time, in line with the more recent legislation of other Community countries, the underlying policy has been adjusted. Now the aim is to cover only those concentrations which have a major impact on the market, by making it possible to check whether, as a result of such concentrations, a dominant position would be created or strengthened which might hinder effective competition in the market.In this way, the thresholds to the application of the Act have been considerably extended.

Thus:

In accordance with the legislative authority conferred upon it by Law No.9/93, of 12 March, and under the provisions of paragraphs a) and b) of no.1 of Article 201 of the Constitution, the Government decrees as follows:

CHAPTER I

RULES APPLYING TO COMPETITION

SECTION I

GENERAL PROVISIONS

Article 1

Scope of the Act

1. This Act applies to all economic activities, whether lasting or occasional, undertaken in the private, public and cooperative sectors.

2. Subject to the international obligations of the Portuguese State, this Act applies to restrictions on competition which occur in the national territory or which may have an effect within it.

3. Restrictions on competition that derive from specific laws are exempt from the application of this Act.

SECTION II

PROHIBITED PRACTICES

Article 2

Agreements, concerted practices and association decisions

1. Agreements and concerted practices between undertakings and decisions by associations of undertakings, in whatever form, which have the object or effect of preventing, distorting or restricting competition in the whole or part of the national market are prohibited, in particular those which have the effect of:

   a) directly or indirectly fixing selling or purchase prices or interfering with the setting of prices by the free market, leading to prices that are artificially high or low;
   b) directly or indirectly fixing other trading conditions at the same or different stages of the economic process;

c) limiting or controlling production, distribution, technical development or investment;

d) sharing markets or sources of supply;

e) applying, whether systematically or occasionally, dissimilar conditions, in respect of prices otherwise, in relation to equivalent transactions;

f) directly or indirectly refusing to purchase or sell goods or to pay for services;

g) making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

2. Agreements or decisions prohibited under this Article are void unless they are considered justified under the provisions of article 5.

Article 3

Abuse of a dominant position

1. Abuse by one or more undertakings of a dominant position within the national market, or a substantial part of it, with the object or effect of preventing, distorting or restricting competition, is prohibited.

2. A dominant market position in regard to specific goods or services arises where:

a) an undertaking operates in a market in which it is not exposed to significant competition or it has the preponderant market share in relation to its competitors;

b) two or more undertakings operate in concert in a market in which they are not exposed to significant competition or they have a preponderant market share in relation to third parties.

3. While taking into account in each particular case other factors relating to the undertakings and the market, it shall be presumed that:

a) an undertaking is within paragraph a) of the previous number if it has a share of at least 30 per cent of the national market in specific goods or services;

b) undertakings are within paragraph b) of the previous number if, together, they hold in the national market in specific goods or services:

i) In the case of 3 or fewer undertakings, a combined share of at least 50%;

ii) In the case of 5 or fewer undertakings, a combined share of at least 65%.

4. An abuse is considered present if any of the behaviour set out in no.1 of article 2 are met.

Article 4

Abuse of economic dependence

Also prohibited is the abuse, by one or more undertakings, of a position of economic dependence upon a supplier or buyer as the result of the absence of an equivalent alternative, namely when their actions take any of the forms set out in no.1 of article 2.

Article 5

Economic balance

1. Restrictive practices on competition which contribute to improvements in the production or distribution of goods or services or promote technical or economic development may be considered justified if:

a) they reserve for users of those goods or services a fair share of the resulting benefits; and

b) they do not impose on the undertakings in question any restrictions which are not essential for the attainment of these objectives; and

c) they do not provide the undertakings in question with the opportunity to eliminate competition in a substantial part of the market in the goods and services in question.

2. Practices specified in article 2 may be the subject of prior evaluation by the Council for Competition according to procedures to be established by decree by the Minister responsible for Trade.

Article 6

Undertakings

For the purposes of this Section, a combination of undertakings, although distinct in legal terms, is to be considered a single undertaking if it maintains interdependent or hierarchical links between the undertakings by means of rights or powers described in no.2 of article 9.

SECTION III

Concentrations of undertakings

Article 7

Prior notification

1. Prior notification is required where action is taken to establish a concentration of undertakings which fulfils one of the following conditions:

   a) the creation or strengthening, as a result of the concentration, of a share higher than 30% of the national market in specific goods or services, or in a substantial part of it;

   b) a turnover in Portugal of the undertakings involved in the concentration of more than thirty thousand million escudos in the preceding financial year, after deduction of tax directly related to the turnover.

2. The provisions of this Section do not apply to credit institutions, finance or insurance companies.

3. Prior notification shall be given before the legal transactions required for the establishment of the concentration are concluded and before the announcement of any public offer to acquire.

4. Until tacit or express authorisation is given for the concentration, legal transactions to establish it have no validity.

Article 8

Market share and turnover

1. In calculating market share and turnover for the purposes of article 7, the turnover of the following is to be taken into account:

   a) the undertakings involved in the concentration;

   b) the undertakings in which they hold, directly or indirectly:

      - a majority share of the capital,

      - more than half the votes,

      -the power to appoint more than half the members of the governing or supervisory boards,

      -the power to direct the business of the undertaking;

   c) the undertakings which hold undertakings that participate in rights or powers set out in paragraph b);

   d) the undertakings in which an undertaking referred to in paragraph c) holds rights or powers set out in paragraph b);

   e) the undertakings in respect of which undertakings referred to in paragraphs a) to d) together hold rights or powers set out in paragraph b).

2. Despite the provisions of the previous number, if the concentration is made up by the acquisition of parts of an undertaking or parts of a combination of undertakings, only that turnover which relates to the undertaking or undertakings, or their parts, that are the subject of the transaction shall be taken into account with regard to the seller or sellers.

3. The turnover referred to in paragraph b) of no.1 of the previous article comprises the value of products sold and services provided to undertakings and consumers in Portuguese territory, but it does not include transactions carried out between the undertakings mentioned in no.1.

Article 9

Concentrations of undertakings

1. A concentration of undertakings is to be treated as occurring:

   a) when two or more previously independent undertakings merge;

   b) when one or more persons who already control at least one undertaking, or when one or more undertakings, take over direct or indirect control of a combination or parts of one or several other undertakings;

   c) when two or more undertakings create a common undertaking, if that undertaking is intended to be an autonomous economic entity of a continuing nature and does not have the object or effect of coordinating competition behaviour between the founding undertakings or between those undertakings and the common undertaking.

2. For the purposes of the previous number, control is to be treated as arising from any act, whatever form it takes, which offers the possibility of exerting, whether separately or in concert with others, a decisive influence, in the given legal and factual circumstances, on the activities of an undertaking, namely:

   a) acquisition of all or any part of the capitalstock;

   b) acquisition of rights of property, use or enjoyment in the whole or parts of the assets of an undertaking;

   c) acquisition of rights, or conclusion of contracts, which confer the power in respect of the composition or in the decision-making of the governing body of an undertaking.

3. The provisions with respect to concentrations do not apply to:

   a) acquisition of shares within the framework of a special procedure for reconstruction of undertakings;
   b) acquisition of shares for the purposes of guaranteeing or satisfying credits.

Article 10

Prohibition of concentrations

1. Unless authorised under the provisions of the following number, agreements to set up a concentration of undertakings that is subject to prior notification are prohibited if, in the market in specific goods or services, or a substantial part of it, they create or strengthen a dominant position in ways that are likely to prevent, distort or restrict competition.

2. Agreements to set up concentrations of undertakings of the kind referred to in the previous number may be authorised to the extent that:

   a) they fall within the provisions of article 5;

   b) the international competitiveness of the undertakings in the concentration is significantly increased.

SECTION IV

STATE AID

Article 11

State aid

1. Aid to undertakings that is provided by the State or any other public body must not restrict or have a significant effect upon competition in the whole or part of the market.

2. At the request of an interested party, the Minister responsible for Trade may examine aid as described in the previous number with a view to proposing to the relevant Minister measures aimed at maintaining or re-establishing competition.

3. For the purposes of this article, the following are not considered to be aid:

   a) compensation, in whatever form, provided by the State in payment for the provision of a public service;

b) benefits provided under the terms of incentive programmes or other specific schemes approved by the Government or the Assembly of the Republic.

CHAPTER II

ORGANS FOR THE PROTECTION OF COMPETITION

Article 12

Directorate-General for Competition and Prices

1. The Directorate-General for Competition and Prices has the following functions:

   a) to identify practices which may breach the current law, to institute and conduct the appropriate legal processes and to ensure that decisions taken are complied with;

   b) to undertake, with respect to concentrations subject to prior notification, the appropriate processes under the provisions of this Act;

   c) at the request of the Competition Council, to carry out the studies necessary for the formulation of an opinion under paragraph c) of no. 1 of article 13;

   d) to undertake sectorial studies, in the matter of competition, which appear to be necessary;

   e) to propose, to the responsible organ, measures which are regarded as appropriate for the proper functioning of competition;

   f) to impose fines in cases where that power is expressly conferred upon it by this Act.

2. The Directorate-General for Competition and Prices also has the following functions:

   a) to perform the functions conferred upon the authorities of the Member-States by the regulations made under Article 87 of the Treaty creating the European Economic Community, namely by Regulation (EEC) No.4064/89, of the Council, of 21 December 1989, without prejudice to the authority of other bodies;

b) to participate in activities promoted by bodies and international institutions in the matter of competition;

c) to institute the appropriate processes for the purposes of article 11.

3. Without prejudice to the provisions of Sections I and II of Chapter III, the Directorate-General for Competition and Prices, in performing the functions conferred by no. 1 and paragraph a) of the previous number, may request any undertakings or associations of undertakings, as well as bodies with which they have links, to provide commercial, financial or other necessary information and documents, within time limits which it considers reasonable and convenient.

4. The Directorate-General for Competition and Prices may also request any central, regional or local administration to provide any information which it considers necessary for the performance of its functions.

Article 13

Functions of the Council for Competition

1. The Council for Competition has the following functions:

a) to decide on the appropriate processes to be instituted with respect to restrictive competition practices prohibited by this Act, and to others referred to it by the Directorate-General for Competition and Prices when acting under paragraph a) of no. 2 of the previous article;

b) to formulate opinions, at the request of the Minister responsible for Trade, in proceedings with respect to concentrations subject to prior notification;

c) to give its advice on questions relating to competition at the request of the Minister responsible for Trade;

d) to provide guidance to the Minister responsible for Trade in matters within the scope of this Act;

e) to participate in activities initiated by international bodies and institutions which are within its functions;

f) to impose fines in cases where it has the legal authority so to do.

2. For the purpose of formulating its opinions under paragraph c) of the previous number, the Council for Competition may request the Directorate-General for Competition and Prices to undertake appropriate studies.

3. The Council for Competition shall present to the Minister responsible for Trade an annual report of its activities, to which is annexed all decisions reached by it; the report is to be published in the Official Journal.

Article 14

Composition of the Council for Competition

1. The Council for Competition shall comprise a president and 4 or 6 voting members, who shall be appointed, by dispatch, by the Prime Minister, acting on the recommendation of the Ministers responsible for Justice and for Trade.

2. The president shall be a magistrate or a judicial officer from the Public Legal Service, who shall be appointed for a renewable period of 3 years, with the authorisation of the Superior Council for the Judiciary or for the Public Legal Service, as the case may be.

3. In the selection of the voting members, due regard shall be had to ability and suitability to perform the functions of the post.

4. The president of the Council for Competition may, when he considers it necessary, invite other persons with special knowledge of matters to be discussed, or representatives of the Public Service or other bodies with relevant interest in those matters, to participate in meetings of the Council without the right to vote.

5. Without prejudice to the provisions of the previous number, the president may summon a representative of the Institute of Consumers to participate in meetings of the Council at which matters of special relevance for consumers are to be discussed.

Article 15

Remuneration and expense allowances

1. The members of the Council shall receive, in addition to any other remuneration, a monthly allowance, at a level to be set, by joint dispatch, by the Ministers responsible for Finance and for Trade, as provided by current legislation.

2. The members of the Council and others who participate in its meetings under the provisions of nos.4 and 5 of the previous article, shall be entitled to an allowance for travel and towards expenses, as provided by the law.

Article 16

Operating costs

The operating costs of the Council for Competition shall be borne from funds appropriated for this purpose in the budget of the Secretariat-General of the Ministry responsible for Trade.

Article 17

Support

1. The Secretariat-General of the Ministry responsible for Trade shall provide the Council with all the administrative support it requires to enable it fully to perform its functions.

2. The Minister responsible for Trade, on the recommendation of the president of the Council for Competition, shall designate the officials from the Secretariat-General, or from any other service in the Ministry, who are to have particular duties in connection with the Council; one of the officials, of senior rank and preferably legally qualified, shall perform the functions of the secretary to the Council for Competition.

Article 18

Internal regulations

The Council for Competition has power to make, and amend, regulations to govern its internal proceedings; the regulations, after approval by the Minister responsible for Trade, are to be published in the Official Journal.

Article 19

Secrecy

1. In performing its functions the Directorate-General for Competition and Prices shall maintain the utmost secrecy and shall comply with the rules on confidentiality by which it is bound.

2. The members of the Council for Competition and the invited persons referred to in no.4 of article 14 are subject to the rules on confidentiality applicable to civil servants, with respect to facts about which they are informed in the course of performing their functions.

Article 20

Disqualifications

The members of the Council for Competition are subject to the same disqualifications as apply in respect of judges.

CHAPTER III

PROCEDURES

SECTION I

PROCEDURES IN RESPECT OF AGREEMENTS, CONCERTED PRACTICES, DECISIONS BY ASSOCIATIONS AND ABUSES OF ECONOMIC POWER

Article 21

Applicable rules

1. The process with respect to breaches of the provisions of articles 2, 3 and 4 shall be conducted in accordance with the provisions of this Section and, subject to those, of Decree-Law No.433/82 of 27 October.

2. The provisions of this Section apply also, but with necessary modifications, in relation to the performance of the functions specified in paragraph a) of no. 2 of article12 and in the final part of paragraph a) of no.1 of article 13.

Article 22

Notice of breaches

1. When the Directorate-General for Competition and Prices becomes aware, by any means, of practices which may be prohibited by articles 2, 3 and 4, it shall take steps to identify those practices and, once it has credible evidence of their existence, it shall institute and conduct appropriate proceedings.

2. All central, regional and local administrative services and all public institutions are under a duty to inform the Directorate-General of facts in their possession which may constitute evidence of restrictive competition practices.

Article 23

Investigatory functions

1. Subject to the restrictions set out in this Section, the Directorate-General for Competition and Prices, when performing its lawful functions, enjoys the same rights and is subject to the same duties as the criminal police service and, in particular, may:

   a) question the legal representatives of undertakings or of associations of undertakings involved, and request them to provide documents and other information that it considers convenient or necessary to elucidate the facts;

   b) question the legal representatives of other undertakings or associations of undertakings and any other persons whose testimony it considers pertinent, and request them to provide documents and other information;

   c) search for, examine and seize copies or extracts of written matter and other documentation, on the premises of undertakings or associations of undertakings involved, in places which are private or not freely accessible to the public, when that procedure is considered necessary in order to obtain evidence;

   d) request, through the appropriate ministerial offices, any other public administration services, including the criminal police, to provide such collaboration as it shows to be necessary for the full performance of its functions.

2. The procedures set out in paragraph c) of the previous number are dependent on the issue of a warrant authorising their execution issued by a judicial authority upon a prior request from the Directorate-General for Competition and Prices showing just cause; a decision on that request shall be handed down within 48 hours.

3. The officials who implement the procedures set out in paragraphs a) to c) of no.1 shall carry with them:

   a) in the cases in paragraphs a) and b), credentials issued by the Director-General of Competition and Prices, in which the purpose of the procedure shall be stated;

b) in the case in paragraph c), credentials specified in the previous paragraph and the warrant mentioned in no.2.

4. Without prejudice to the provisions of no.4 of article 37, the officials mentioned in the previous number may request the assistance of the police authorities, should that become necessary.

Article 24

Suspension of prohibited practices

1. At any moment in the proceedings, and as soon as the investigation indicates that the practice which is the subject of the procedure is seriously damaging to economic and social development or to the interests of trading parties or of consumers, the Council for Competition may, on the proposal of the body conducting the procedure, showing reasoned grounds, order immediate preventive measures for the suspension or modification of the practice in question.

2. The measures authorised by this article shall last no longer than 90 days, subject to extension, on one occasion only, for the same period.

3. The Council for Competition shall request an opinion from the Bank of Portugal, and, if it considers it necessary, from the Commission of the Stock Exchange, under article 88 of the General Regime of Credit Institutions and Financial Undertakings, approved by Decree-Law No.298/92 of 31 December; the opinion shall be issued within 7 days.

4. Where the practices of insurance companies are in question, the Council for Competition shall request an opinion from the Portuguese Institute of Insurance on the activities of the insurer which is the subject of the proceedings; the opinion shall be issued within 7 days.

Article 25

Hearings

1. During the proceedings, the Directorate-General for Competition and Prices shall conduct oral or written hearings in order that the accused undertakings or associations of undertakings may state their position with respect to the matter on which a decision is to be taken and to the evidence presented and may request supplementary investigations which they consider appropriate.

2. In the hearing under the previous number, the Directorate-General for Competition and Prices shall safeguard the legitimate interests of the undertakings by not disclosing business secrets.

3. The Directorate-General for Competition and Prices may refuse a supplementary investigation if it is clear that the evidence requested is irrelevant or the request is aimed at delaying the proceedings.

4. After the hearing under no.1, the Directorate-General for Competition and Prices may, of its own initiative, undertake a supplementary investigation; any evidence obtained shall be subject to the right of reply.

Article 26

Conclusion of proceedings

1. Once the proceedings are concluded, the Directorate-General for Competition and Prices shall draw up its final report and transmit the matter to the Council for Competition for decision.

2. The Council for Competition may, when it considers it necessary, request that the Directorate-General for Competition and Prices conduct supplementary proceedings, or may undertake them itself.

3. If the accused undertakings are credit institutions or finance companies, or their associates, the Council for Competition shall request an opinion from the Bank of Portugal and, if it considers it necessary, from the Stock Exchange Commission, under article 88 of the General Regime for Credit Institutions and Financial Undertakings; an opinion shall be issued within 30 days.

4. In the case of insurance or pension fund management companies, the opinion referred to in the previous number shall be requested from the Portuguese Insurance Institute, which shall provide it within 30 days.

Article 27

Decisions of the Council for Competition

1. The Council for Competition, in its decision, may:

   a) order the case to be closed;

   b) declare the existence of a restrictive practice in competition and, in that event, order the offender to take measures required to bring that practice, or its effects, to an end within a specified period of time;

   c) impose the fines set out in no.2 of article 37.

2. The Council for Competition shall order the offender to publish the decision in the Official Journal and in a newspaper that has a national or regional or local circulation, depending on the reach of the market in which the practice, which gave rise to the contravention, was identified and on its seriousness or effects.

3. The Council for Competition shall send a copy of all decisions taken under the provisions of no.1. to the Minister responsible for Trade and to the Directorate-General for Competition and Prices.

Article 28

Appeals

1. An appeal against a decision of the Council for Competition shall be made to the Lisbon District Court.

2. An appeal under the previous number has no suspending effects for the irregular conduct, except where it concerns the imposition of a fine or a publication order under no. 2 of the previous article; in these cases the measures may be suspended.

SECTION II

PROCEDURES WITH RESPECT TO THE CONTROL OF CONCENTRATIONS OF UNDERTAKINGS

Article 29

Applicable rules

The procedure with respect to the control of concentrations is set out in this Section as supplemented by the Code of Administrative Procedure.

Article 30

Notifications

1. The prior notification of actions to establish concentrations required by no.1 of article 7 shall be given to the Directorate-General for Competition and Prices.

2. Notification shall be given:

   a) In cases of a merger or establishment of common control, by the group of participating undertakings;

   b) In other cases, by the undertaking or by the persons intending to acquire control of the combination or of parts of one or more undertakings.

3. The following information must be provided in a notification:

   a) the identity of the individuals or corporations participating in the actions to establish the concentration;

   b) the nature and legal form of the concentration;

   c) the types of goods and services to be provided;

   d) a list of the undertakings which have interdependent or hierarchical links with the participants resulting from the rights or powers set out in paragraph b) of no.1 of article 8;

e) the market share that will result from the concentration, and details of how that share was calculated;

f) the turnover in Portugal of the participating undertakings and of those referred to in no.1 of article 8, by reference to the preceding financial year;

g) the annual reports and accounts of the participating undertakings relating to the three preceding financial years;

h) an indication of the main competitors;

i) an indication of the main customers and suppliers;

j) such other information which the parties to the notifications consider relevant in the particular case to determining whether the conditions set out in the paragraphs of no.2 of article 10 are fulfilled.

Article 31

Procedures

1. The Directorate-General for Competition and Prices, after conducting the appropriate proceedings, shall pass the process to the Minister responsible for Trade within 40 days after the date of receiving the notification.

2. If, during the course of the proceedings, the information set out in the notification is found to be incomplete in terms of the provisions of no.3 of the previous article, or if the provision of additional information is thought to be advantageous, the Directorate-General for Competition and Prices shall communicate that fact to the parties to the notification, and shall set them a reasonable time limit by which they must complete, correct or provide the information in question.

3. Without prejudice to the provisions of paragraph d) of no.2 of article 37, the same procedure shall be followed if false information is included in the notification.

4. A communication under no.2 suspends the time limit set in no. 1 with effect from the day following the dispatch of the notification to the day when the Directorate-General for Competition and Prices receives the requested information.

5. During its proceedings, the Directorate-General for Competition and Prices may request any other undertakings or association of undertakings to provide all information it considers appropriate within time limits that it considers reasonable.

6. The Directorate-General for Competition and Prices shall hold a written hearing with respect to the parties to the notification up to 10 days before the end of the time limit set by no.1.

7. Supplementary investigations of evidence may be requested, during the written hearing, by the parties to the notification, which, if granted, shall result in the suspension of the time limit set in no.1.

8. The suspension referred to in the previous number shall begin on the day following the receipt by the Directorate-General for Competition and Prices of the request for supplementary investigations and end on the day they are concluded.

9. The provisions of the previous numbers apply, with necessary modifications, but without affecting the provisions of paragraph c) of no.3 of article 37, to actions to establish concentrations of which the Directorate-General for Competition and Prices becomes aware and of which it has not received prior notification; in that case, the time limit set by no.1 shall be 90 days, beginning on the date of the formal initiation of proceedings.

Article 32

Communications or tacit authorisation

1. If the concentration in question is considered likely to have a negative effect on competition under the criteria set out in no.1 of article 10, the Minister responsible for Trade shall pass the process to the Council for Competition for its opinion, within 50 days after the date of receipt by the Directorate-General for Competition and Prices of the notification mentioned in no.1 of article 7, and shall, on the same date, communicate that fact to the parties to the notification.

2. If no communication is sent within the time limit prescribed by the final part of the previous number, this shall be regarded as a decision not to oppose the establishment of the concentration.

3. In calculating the time limit set by no.1, days during which time limits for the conduct of proceedings were suspended under the provisions of nos.4 and 8 of the previous article shall not be counted.

Article 33

Opinions of the Council for Competition

Within 30 days after the date of the receipt of the process by the Council for Competition, it shall return it to the Minister responsible for Trade, with its opinion, in which it shall:

a) assess whether the concentration is likely to have a negative effect on competition under the criteria in no.1 of article 10;

b) consider whether,in the particular case,the condition set out in no.2 of article 10 are met.

Article 34

Decisions

1. Within 15 days after the date of the receipt of the opinion of the Council for Competition, the Minister responsible for Trade may decide:

a) not to oppose the concentration;

b) not to oppose the concentration, subject to the imposition of conditions and obligations appropriate for the maintenance of effective competition;

c) to prohibit the concentration and, if it is already established, to order appropriate measures to create effective competition, namely, the separation of the undertakings or of the combined assets or the ending of the control.

2. Decisions under paragraphs b) and c) of the previous number shall be presented in the form of a joint dispatch from the Minister responsible for Trade and the Minister responsible for the economic activities affected by the concentration.

3. Legal transactions relating to a concentration are void to the extent to which they give effect to activities condemned by the joint dispatch which prohibited the concentration or imposed conditions on its establishment or ordered appropriate measures to create effective competition.

Article 35

Appeals

Appeals against decisions under paragraphs b) and c) of no. 1 of the previous article shall be heard by the Supreme Administrative Court.

Article 36

Special procedures

1. Without affecting the application of appropriate sanctions, if it is found that a decision not to oppose a concentration was based on false information in respect of matters essential to the decision, the Directorate-General for Competition and Prices shall, on its initiative, institute proceedings with a view to the application of measures referred to in paragraph c) of no.1 of article 34.

2. The provisions of articles 31 to 34 apply, with necessary modifications, in relation to the proceedings instituted under the previous number.

CHAPTER IV

SANCTIONS

Article 37

Fines

1. Without with prejudice to any penal responsibility that may arise, breaches of the provisions of this statute are to be regarded as contraventions punishable with a fine in accordance with the following numbers.

2. Conduct restricting competition as described in articles 2, 3, and 4 is to be regarded as a contravention punishable with a fine of 100,000 escudos to 200,000 escudos.

3. The following contraventions are punishable with a fine of 100,000 escudos to 100,000,000 escudos:

   a) failure to comply with an order of the Council for Competition under no.1 of article 24;

   b) failure to comply with decisions made under paragraphs b) and c) of no.1 of article 34;

   c) failure to provide prior notification of action to establish a concentration that is subject to prior notification under the provisions of no.1 of article 7;

   d) providing false information in a notification given under no.1 of article 7;

   e) providing false information in reply to a request under no.2 of article 31, or not providing information.

4. The following contraventions are punishable with a fine of 100,000 escudos to 10,000,000 escudos are:

   a) obstructing an investigation under no.1 of article 23;

   b) providing false declarations or information in reply to a request under paragraph b) of no.1 of article 23 or of no.4 of article 31.

5. The following contraventions are punishable with a fine of 50,000 escudos to 5,000,000 escudos:

   a) providing false declarations or information in reply to a request under no.3 of article 12, or refusal to provide such declarations or information;

   b) failure to comply with a publication order by the Council for Competition under no.2 of article 27.

6. Failure of the offender to comply with an order under paragraph b) of no.1 of article 27 shall lead to the institution of fresh proceedings with a view to fines being imposed under no.2 of this article.

7. A fine under paragraph b) of no.5 shall always be greater than the cost of the publication, which shall be carried out by the Secretary-General of the Ministry responsible for Trade.

8. Negligent conduct shall be punished.

9. When the offender is an individual, the sums specified in nos. 2 and 5 shall be reduced by half.

Article 38

Functions in respect of the imposition of fines

The Directorate-General for Competition and Prices has the function of imposing fines, except in the case of fines under no.2, paragraph a) of no.3, and paragraph b) of no.5, of the previous article, imposition of which is the function of the Council for Competition.

Article 39

Revenue from fines

Of the revenue from fines imposed in respect of breaches of this Act, 60% shall revert to the State, 30% to the Directorate-General for Competition and Prices and 10% to the Secretary-General of the Ministry responsible for Trade.

CHAPTER V

FINAL PROVISIONS

Article 40

Repeals

1. Decree-Law No.422/83, of 3 December, and supplementary legislation, Decree-Law No.428/88, of 19 November, and the Legal Dispatch No.59/87, of 9 July, are repealed.

2. Provisions which confer functions in respect of the protection of competition upon other bodies not referred to in articles 12 and 13 are repealed.

3. The provisions of Decree-Law No.422/83, of 3 December, apply to contraventions that occurred prior to the date on which this Act comes into force, but without affecting the application thereto of provisions of this Act which may be more favourable.

Article 41

Final and transitional provisions

1. The provisions of this Act do not apply to concentrations of undertakings that have been notified under the terms of Decree-Law No.428/88, of 19 November, in relation to which a decision is pending on the date on which this Act comes into force.

2. In the case of public services, this Act does not apply to undertakings legally awarded concessions by the State, within the scope and terms of the relevant concession contract.

3. The president and the voting members of the Council for Competition, as well as the officials and other personnel concerned in its functioning, continue in their posts under the terms of their respective appointments.

Article 42

Commencement

This Act comes into force on 1 January 1994.

Seen and approved by the Council of Ministers meeting of 15 July 1993.

The PRIME MINISTER,

The MINISTER FOR FINANCES,

The MINISTER FOR JUSTICE,

The MINISTER FOR TRADE AND TOURISM,

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